JULY 2014
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62
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SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **July 2014**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(1 Document)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72637 / July 17, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3567 / July 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15977

In the Matter of **ROBERT C. TROSTEN, CPA,** **Respondent.**	**ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Robert C. Trosten, CPA pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 200.102(e)(2)].[1]

II.

The Commission finds that:

1. Trosten has an inactive certified public accountant license in New York.

2. On June 12, 2014, a judgment of conviction was entered against Trosten in *United States v. Trosten,* S3 05 Cr. 01192 (NRB) in the United States District Court for the Southern

[1] Rule 102(e)(2) provides in pertinent part: "Any . . . person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

District of New York, finding him guilty of one count of conspiracy to commit securities fraud, one count of securities fraud, one count of wire fraud, one count of bank fraud, and one count of money laundering.

3. As a result of this conviction, Trosten was sentenced to imprisonment for a term of time served. The District Court also ordered Trosten to forfeit assets in an amount up to $2.4 billion, for which he is jointly and severally liable with certain other defendants.

III.

In view of the foregoing, the Commission finds that Trosten has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED that Robert C. Trosten, CPA is forthwith suspended from appearing or practicing before the Commission as an accountant pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **July 2014**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

(61 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72508 / July 1, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15954

In the Matter of China Everhealth Corp., Genova Biotherapeutics, Inc., Glacier Enterprises, Inc., Green Asia Resources, Inc., Jesup & Lamont, Inc., and Panoshan Marketing Corp., Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents China Everhealth Corp., Genova Biotherapeutics, Inc., Glacier Enterprises, Inc., Green Asia Resources, Inc., Jesup & Lamont, Inc., and Panoshan Marketing Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. China Everhealth Corp. (CIK No. 1483056) is a delinquent British Virgin Islands ("BVI") corporation located in Road Town, Tortola, BVI with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Everhealth is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 30, 2010, which reported a net loss of $1,000 for the prior three months.

2. Genova Biotherapeutics, Inc. (CIK No. 1364587) is a revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Genova Biotherapeutics delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2009, which reported a net loss of $39,201 for the prior twelve months. As of June 20, 2014, the company's stock (symbol "GVBP") was traded on the over-the-counter markets.

3. Glacier Enterprises, Inc. (CIK No. 1433563) is a void Delaware corporation located in Uniontown, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Glacier Enterprises is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of $3,134 since the company's February 9, 2009 inception.

4. Green Asia Resources, Inc. (CIK No. 1438038) is a BVI corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Green Asia Resources is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 2009, which reported a net loss of $28,622 for the prior twelve months.

5. Jesup & Lamont, Inc. (CIK No. 1094320) is a dissolved Florida corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Jesup & Lamont is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of over $3.7 million for the prior three months.

6. Panoshan Marketing Corp. (CIK No. 1301369) is an Alberta corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Panoshan is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended June 30, 2010, which reported a net loss of $54,014 for the prior twelve months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration

is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

美利坚合众国
之
证券交易监督委员会

《1934 年证券交易法》
发行号 72508 / July 1, 2014

行政程序
备案号 3-15954

就以下相对人之事项: China Everhealth Corp., Genova Biotherapeutics, Inc., Glacier Enterprises, Inc., Green Asia Resources, Inc., Jesup & Lamont, Inc. 和 Panoshan Marketing Corp. 相对人。	依据《1934 年证券交易法》第 12(j) 条, 送达行政程序启动暨听证通知令

I.

证券交易监督委员会（“委员会”）认为，依据《1934 年证券交易法》（“证券法”）第 12(j) 条对相对人 China Everhealth Corp.、 Genova Biotherapeutics, Inc.、Glacier Enterprises, Inc.、Green Asia Resources, Inc.、Jesup & Lamont, Inc. 和 Panoshan Marketing Corp. 特此提起公共行政程序，对保护投资者是必要且适当的。

II.

经调查，执行部诉称:

A. 相对人

1. China Everhealth Corp. (CIK No. 1483056) 是位于英属维尔京托土拉岛路德镇的一家英属维尔京群岛（“BVI”）公司，依据证券法第 12(g) 条在委员会注册了一类证券，存在违规行为。China Everhealth 未按规定向委员会提交定期报告。自提交截止 2010 年 7 月 30 日的 10-Q 表（称前三个月净亏损 1,000 美元）后，China Everhealth 再未提交任何报告。

2. Genova Biolherapeutics, Inc.（CIK No. 1364587）是纽约州纽约市一家已被撤销的内华达州公司，依据证券法第 12(g) 条在委员会注册了一类证券。Genova Biotherapeutics 未按规定向委员会提交定期报告。自提交截止 2009 年 12 月 31 日的 10-K 表（称过去十二个月净亏损 39,201 美元）后，Genova Biotherapeutics 再未提交任何定期报告。自 2014 年 6 月 20 日起，该公司股票（代码 GVBP）开始在场外交易市场交易。

3. Glacier Enterprises, Inc.（CIK 号 1433563）是俄亥俄州尤宁镇一家空头的特拉华州公司，依据证券法第 12(g) 条在委员会注册了一类证券。Glacier Enterprises 未按规定向委员会提交定期报告。自提交截止 2010 年 3 月 31 日的 10-Q 表（称其自 2009 年 2 月 9 日发起以来净亏损 3,134 美元）后，Glacier Enterprises 再未提交任何报告。

4. Green Asia Resources, Inc.（CIK 号 1438038）是位于中国北京的一家英属维尔京群岛（BVI）公司，依据证券法第 12(g) 条在委员会注册了一类证券。GGreen Asia Resources 未按规定向委员会提交定期报告。自提交截止 2009 年 12 月 31 日的 20-F 表（称过去十二个月净亏损 28,622 美元）后，Green Asia Resources 再未提交任何报告。

5. Jesup & Lamont, Inc.（CIK 号 1094320）是纽约州纽约市一家已被撤销的佛罗里达州公司，依据证券法第 12(g) 条在委员会注册了一类证券。Jesup & Lamont 未按规定向委员会提交定期报告。自提交截止 2010 年 3 月 31 日的 10-Q 表（称前三个月净亏损 370 万美元）后，Jesup & Lamont 再未提交任何报告。

6. Panoshan Marketing Coip.（CIK 号 1301369）是位于加利福尼亚州洛杉矶市的一家阿尔伯塔公司，依据证券法第 12(g) 条在委员会注册了一类证券。Panoshan 未按规定向委员会提交定期报告。自提交截止 2010 年 6 月 30 日的 20-F 表（称过去十二个月净亏损 54,014 美元）后，Panoshan 再未提交任何报告。

B. 未按规定提交定期报告

7. 正如上文详述，所有相对人均未按规定向委员会提交定期报告，屡次不履行按时提交定期报告的义务，且在收到企业金融部发出的催告函，要求其遵守定期申报义务后，仍不予理会，或因未按证监会的规定在证监会维护有效备案地址，从而未收到该等催告函。

8. 根据证券法第 13(a) 条及其发布的规定，依据证券法第 12 条注册的证券发行者，即使是根据第 12(g) 条自愿注册，亦应以定期报告的方式向委员会提交最新且准确之信息。具体而言，第 13a-1 条规定要求发行者提交年报，第 13a-13 条规定要求国内发行者提交季报。

9. 由于上述原因，相对人未遵守证券法第 13(a) 条和根据该法发布的第 13a-1 条和/或 13a-13 条之规定。

III.

鉴于执行部提出的诉称，委员会认为提起公共行政程序确定以下事项对保护投资者是有必要且适当的：

A. 本命令第 II 部分所包含的诉称是否属实，就该诉称而言，给予相对人对该等诉称进行抗辩的机会；以及

B. 就保护投资者而言，对本命令第 II 部分所指定相对人、证券法第 12b-2 条或第 12g-3 条规定下的任何继承人、采用新公司名称的相对人采取以下行为是否有必要且适当—— 暂停（不超过十二个月）或撤销其依据证券法第 12 条注册的各类证券；

IV.

特此命令，为对第 III 部分所述问题进行取证，应在待定的时间和地点召开公开听证，并由《美国证监会行为规范》第 110 条规定的进一步命令所指定的行政法法官主持[《美国联邦法规》第 17 编第 201.110节]。

进一步命令，相对人应在本命令送达后十 (10) 日内，按《美国证监会行为规范》第 220(b) 条规定 [《美国联邦法规》第 17 编第 201.220(b) 节] 对本命令中所包含的诉称提交答辩状。

若相对人未提交所规定的答辩状，或在收到通知后未出席听证，则相对人及《美国证监会行为规范》第 12b-2 条或第 12g-3 条规定下的任何继承人，以及拥有新公司名称的相对人，将被视为缺席，且将针对其就命令中的事项确定相应程序，根据《美国证监会行为规范》第 155(a)、220(f)、221(f) 和 310 条规定 [《美国联邦法规》第 17 编第 201.155(a)、201.220(f)、201.221(f) 和 201.310 节]，命令中的诉称将被视为属实。

本命令应以直接送达的方式或通过特快专递或《美国证监会行为规范》允许的其它方式，立即送达相对人。

进一步命令，行政法法官应依据《美国证监会行为规范》第 360(a)(2) 条规定 [《美国联邦法规》第 17 编第 201.360(a)(2) 节]，在不晚于本命令送达之日起的 120 天内做出初始裁决。

如缺少相关弃权，则委员会在本程序或任何事实上相关的程序中从事调查或起诉职能的任何官员或雇员，均不得参加本事项的决策或对本事项的决策提出建议，但依据通知在诉讼中担任证人或律师的除外。因本程序并非《行政诉讼法》第 551 节定义的“法规制定”，因此不受第 553 条规定的限制，无须推迟委员会任何最终决议的实行日期。

委员会。

助理秘书
Jill M. Peterson

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9608 / July 1, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72503 / July 1, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3562 / July 1, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15952

In the Matter of EFP ROTENBERG, LLP and NICHOLAS R. BOTTINI, CPA, Respondents.	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 21C AND 4C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS, AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 21C and 4C(a)(2)[1] of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 102(e)(1)(ii) of the Commission's

1 Section 4C(a)(2) provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to have engaged in . . . improper professional conduct.

Rules of Practice[2] against EFP Rotenberg, LLP ("Rotenberg") and Nicholas R. Bottini ("Bottini") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over themselves and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 21C and 4C(a)(2) of the Securities Exchange Act of 1934, and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions, and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[3] that:

A. SUMMARY

1. This matter concerns improper professional conduct by EFP Rotenberg, LLP and Nicholas R. Bottini (collectively, "Respondents") in connection with the audit of the financial statements of Universal Travel Group ("UTG") for the year ending December 31, 2010 (the "UTG Audit"), and their violation of the document retention requirements of Rule 2-06 under Regulation S-X [17 C.F.R. § 210.2-06].

B. RESPONDENTS

2. EFP Rotenberg, LLP is a public accounting firm, registered with the Public Company Accounting Oversight Board ("PCAOB") and headquartered in Rochester, New York. Rotenberg became UTG's auditor on April 28, 2011.

3. Nicholas R. Bottini, CPA, 52 years old, was a partner of EFP Rotenberg, LLP and led the firm's China practice, which performed multiple audits of China-based issuers. He was the engagement partner for the UTG Audit. As such, Bottini exercised final authority on all

2 Rule 102(e)(1)(ii) provides, in pertinent part, that:

> The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . to have engaged in . . . improper professional conduct.

3 The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

significant decisions relating to the UTG Audit. Bottini is a Certified Public Accountant, licensed in New York, Pennsylvania and California, and he is a resident of Tustin, California.

C. RELEVANT ENTITY

4. Universal Travel Group is a Nevada corporation headquartered in Shenzhen, the People's Republic of China ("PRC"). UTG's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was listed on the New York Stock Exchange ("NYSE") until it voluntarily delisted in April 2012. In September 2013, the Commission filed a settled injunctive action against UTG and its former chief executive officer and chief financial officer, alleging antifraud, reporting, books and records, and internal controls violations. The Commission also revoked the registration of UTG's securities pursuant to Section 12(j) of the Exchange Act.

D. FACTS

5. UTG became a public company in the U.S. in 2006 through a reverse merger with a Nevada shell company. All of its operations are in the PRC. It claims to sell airline tickets, hotel rooms, and packaged tours by telephone, in person, and over the Internet. Between 2007 and 2010, UTG announced the acquisition or creation of ten PRC operating companies and consistently reported growing revenues and profits.

Analysts Accuse UTG of Fraud

6. UTG changed auditors on September 1, 2010, and on September 15, an Australian advisory firm published a report on the Internet that described UTG's English language booking systems as dysfunctional, its web traffic as very low compared to its competitors, and certain financial statement balances as suspicious. UTG disputed the report, but its recently appointed auditor resigned shortly thereafter and UTG hired a new auditor.

7. In March 2011, a U.S. research firm published a report which doubted "the authenticity of [UTG's] revenue and net income," and accused UTG of "lying about the amount of cash on its balance sheet." The research firm analyzed certain UTG financial statement balances and also found items that were suspicious. For example, in 2009, UTG reported spending very little on advertising and marketing compared to its PRC competitors, but UTG claimed to sell equivalent numbers of airline tickets and hotel bookings; this suggested to the research firm that "[UTG's] financial statements are fabricated." The research firm claimed further to have viewed the financial filings of certain UTG subsidiaries that were provided to the PRC government, and found that the revenues, income, and assets reported in these PRC filings were far lower (less than 1%) than the corresponding figures reported in UTG's Commission filings.

The Predecessor Auditor Resigns

8. The public accounting firm that preceded Rotenberg as UTG's auditor (the "Predecessor Auditor") obtained evidence during its field work for the 2010 UTG audit indicating that UTG had tampered with the third party confirmation process. In testing accounts receivables, revenues and trade deposits, the Predecessor Auditor sent out over 500 third party confirmation requests, using addresses supplied by UTG. All were returned with no exceptions, a very unlikely 100% response rate, and an examination of the confirmation replies revealed certain similarities, suggesting they were prepared by the same person. The Predecessor Auditor attempted unsuccessfully to match customer addresses to directories and web sites, and in one instance it attempted an in-person visit to a purported hotel customer in Shenzhen, but the address provided by UTG turned out to be a public restroom.

9. The Predecessor Auditor also made telephone calls to a sampling of customers and deposit holders, using numbers supplied by UTG. In many cases the customers told the Predecessor Auditor that they never received any confirmation or never confirmed any balance due; further, when provided with a copy of the returned confirmation, customers stated that the corporate stamps and handwritten marks did not look familiar. At the same time, in testing UTG's substantial cash tour revenues, in many cases UTG was unable to supply requested backup documents such as invoices or receipts, and in some cases documents provided by UTG appeared to be newly-created or otherwise suspicious.

10. In light of the issues it encountered, the Predecessor Auditor advised UTG's audit committee that it needed to obtain explanations from UTG management and to conduct additional procedures, such as obtaining original supporting documents from UTG's files while in the presence of audit staff. UTG's audit committee did not agree to the additional procedures and on April 9, 2011, the Predecessor Auditor resigned. On April 14, 2011, UTG filed a Form 8-K with the Commission reporting that the Predecessor Auditor had resigned, citing scope limitations and a loss of confidence in UTG's directors and audit committee. The Form 8-K also reported that prior to its resignation, the Predecessor Auditor encountered issues during the audit related to the authenticity of confirmations and the lack of evidence of certain contracts and related cash payments. In the wake of the Predecessor Auditor's resignation, the NYSE suspended trading in UTG stock.

11. In the Form 8-K filed on April 14, 2011 reporting the Predecessor Auditor's resignation, UTG reported that its audit committee had approved the appointment of Rotenberg as new auditor as of April 12, 2011, and that Rotenberg agreed to the appointment subject to UTG clearing its client acceptance procedures. On April 29, 2011, UTG filed a Form 8-K with the Commission stating that it had cleared Rotenberg's client acceptance procedures. On June 8, 2011, UTG filed its Form 10-K for the year ending December 31, 2010, which included Rotenberg's unqualified audit opinion as to UTG's financial statements.

E. AUDIT DEFICIENCIES

Failure to Establish Adequate Client Acceptance Policies

12. An accounting firm should establish policies and procedures for deciding whether to accept or continue a client relationship and whether to perform a specific engagement for that client. Such policies and procedures should provide the firm with reasonable assurance that the likelihood of association with a client whose management lacks integrity is minimized. PCAOB Quality Control Standard § 20.14.[4] Rotenberg did not have adequate policies and procedures as to client acceptance at the time it approved UTG as a client, which allowed the final acceptance of the UTG engagement without attempting to make any inquiries of the Predecessor Auditor.

Failure to Inquire of the Predecessor Auditor

13. Inquiry of the predecessor auditor is a necessary procedure and such communications should be evaluated before the auditor accepts an engagement. AU § 315.03 and 07. Predecessor auditor includes an auditor who did not complete an audit and has resigned. AU § 315.02. The successor auditor should make specific and reasonable inquiries of the predecessor auditor regarding matters that include, among others, information that might bear on the integrity of management and on disagreements with management. AU § 315.09. Despite the multiple issues raised by the Predecessor Auditor in UTG's Form 8-K filed on April 14, 2011, including the Predecessor Auditor's assertion that they "had lost confidence in the Board of Directors' and the Audit Committee's commitment to sound corporate governance and reliable financial reporting", Bottini made no attempt to communicate with UTG's predecessor auditor prior to accepting UTG as a client. Respondents obtained copies of all confirmation replies and certain other documents from a Hong Kong firm which had assisted the Predecessor Auditor, thereby giving them more reason to know of possible tampering with the confirmation process referenced in the Form 8-K. But Bottini did not request that UTG authorize the Predecessor Auditor to allow Respondents to review the Predecessor Auditor's work papers, which included relevant information learned by the Predecessor Auditor through its procedures relating to customer address checks, telephone calls to customers, and tour revenue backup documentation requests.

Failure to Adequately Plan the Audit

14. PCAOB Standards require that audits be adequately planned. AU §§ 150.02 and 311.01. Additionally, the auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. AU § 110.02. Respondents failed to meet these standards.

Failure to Obtain a Sufficient Understanding of UTG's Internal Controls

15. Auditors should obtain an understanding of the client's internal controls sufficient to plan the audit. AU § 319.02. Additionally, as part of the understanding of internal control sufficient to plan the audit, the auditor should evaluate whether entity programs and controls that

[4] All references to PCAOB standards are to standards in effect at the time of the conduct described.

address identified risks of material misstatement due to fraud have been suitably designed and placed in operation. AU § 316.44. A sufficient understanding is obtained by performing procedures to understand the design of controls relevant to an audit of financial statements and determining whether they have been placed in operation. AU § 319.25. Respondents obtained flow charts and memoranda which purported to illustrate specific controls at UTG's subsidiaries, but the documents were in Chinese and largely incomprehensible English translations. Bottini was unable to decipher the flowcharts and memoranda and therefore Respondents did not obtain a sufficient understanding of the design of UTG's purported internal controls or their operational status. Thus, in planning the audit, Respondents did not learn of and could not take into account UTG's inadequate controls over cash and its inadequate cash documentation practices, as alleged in the Commission's complaint against UTG.

Failure to Adequately Extend or Revise Procedures to Address Indications of Fraud

16. The auditor's responses to address specifically identified risks of material misstatement due to fraud may include changing the nature, timing, and extent of auditing procedures. AU § 316.52. In planning the UTG audit, Bottini received several indications of possible fraud, including the resignation of the Predecessor Auditor, the critical analyst reports, and contemporaneous government and media reports that local banking personnel in the PRC had colluded with public company audit clients by providing U.S. accounting firms with false cash confirmations and false monthly bank statements.

17. Despite the Predecessor Auditor's concerns with the authenticity of confirmations and a loss of confidence in confirmation procedures carried out under circumstances which the Predecessor Auditor believed to be suspicious, Bottini planned accounts receivable procedures that called for confirmation by mail or delivery service – the same procedures used by the Predecessor Auditor. Other than speaking with UTG management, Bottini made no plans to investigate the anomalous accounts receivable confirmation replies to the Predecessor Auditor and, in fact, performed accounts receivable testing on a population that was smaller than that of the Predecessor Auditor.

18. As to the critical analyst reports, Bottini made no plans to determine whether the report concerning UTG's financial filings with the PRC government was true and, if it was, why the filings differed substantially from UTG's Commission filings. As to unusual financial statement assertions highlighted by analyst reports, such as marketing costs, the work papers state that such assertions would be "addressed through analytic procedures." However, they provide no explanation as to how additional analytic procedures would explain the anomalous financial results highlighted by the analysts and, in fact, the analytic procedures undertaken were not designed to address the concerns highlighted by the analyst reports as they merely sought to explain differences between current and historical balances of the same UTG accounts.

19. As to reports that PRC banks had provided false cash confirmations and monthly statements, Bottini made no changes to planned cash procedures which called for confirmations by mail or by client-arranged visits to local bank branches.

Failure to Obtain Sufficient Competent Evidence, Exercise Due Professional Care, Exhibit Heightened Professional Skepticism, and Control the Confirmation Process

20. Auditors are required to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the financial statements under audit. AU §§150.02 and 326.01. The evidential matter obtained should be sufficient for the auditor to form conclusions concerning the validity of the individual assertions embodied in the components of financial statements, and evidential matter obtained from independent sources outside an entity provides greater assurance of reliability than that secured solely within the entity. AU § 326.13 and .21. In planning and performing an audit, auditors should exercise due professional care. AU §§ 150.02 and 230.01. In situations involving higher risk of fraud, auditors may need to exercise heightened professional skepticism. In re Gregory M. Dearlove, CPA, Exch. Act Rel. No. 57244 (Jan. 31, 2008) at p. 8. In conducting confirmations with third parties, the auditor should exercise appropriate professional skepticism and maintain control over the process. This means establishing direct communication with the intended recipient. AU § 330.15 and .28. Respondents failed to meet these standards.

21. As of December 31, 2010, UTG claimed total assets of $140 million, including cash and a bank certificate of deposit totaling $59.3 million and accounts receivable of $38.7 million. As to cash, Respondents attempted and were unable to confirm with a PRC bank one-third of the cash assets, despite the fact that they had designated cash as a significant risk and a fraud risk when planning their audit of UTG. Additionally, for over half of the cash assets, Respondents obtained confirmations only after UTG arranged visits to local branches of PRC banks, even though Bottini understood that this procedure was subject to collusion based on reports by other accounting firms. Thus, the quantity of evidence obtained as to cash was not sufficient and the quality of the evidence was lacking.

22. As to UTG's accounts receivable, Bottini sought confirmation of accounts owing a total of only 20% of UTG's total year-end accounts receivable balance, despite the high risk in the account as highlighted by the concerns of the Predecessor Auditor. For the replies that were received, the quality of the replies was poor. Most of the replies contained only a customer stamp, did not affirmatively state agreement with the balance due, and did not supply any of the information sought by the request (such as the name, title and telephone number of responding party). Given the circumstances, including the circumstances described in paragraph 13 herein, the quantity and quality of the audit evidence obtained did not satisfy the third standard of field work of AU § 150. Moreover, Bottini allowed UTG to arrange for pickup and delivery of the confirmations, thus failing to establish direct communication with the intended recipients of the confirmations, as required by AU § 330, and giving UTG the opportunity to tamper with the process.

Failure to Adequately Document Accounts Receivable and Retain Documentation

23. The auditor must document the procedures performed and evidence obtained such that an experienced auditor can understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached. PCAOB Auditing Standard No. 3.6. Under Rule 2-06 of Regulation S-X, auditors must retain for seven years work papers

and other documents created, sent or received in connection with an audit that contain conclusions, opinions, analyses or financial data related to the audit. After scanning the returned accounts receivable confirmations into Rotenberg's computer system, the UTG Audit team then discarded the originals. In certain cases, the most important part of the scanned document – the customer stamp – was illegible. As a result, Respondents did not adequately retain documentation because an auditor could not determine the nature of the evidence obtained by reviewing the scanned copies in the work papers.

F. LEGAL STANDARDS

24. As a result of the conduct described above, Respondents engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. These provisions provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission in any way to any person who is found by the Commission to have engaged in improper professional conduct. Under Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice, improper professional conduct includes negligent conduct in the form of repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Section 8A of the Securities Act and Section 21C of the Exchange Act provide that if the Commission finds that any person has violated any provision of these titles or any rule thereunder, the Commission may order such person to cease and desist from committing or causing such violations.

25. Rotenberg's and Bottini's failure to abide by PCAOB standards in the UTG Audit, as described above, involved repeated instances of unreasonable conduct.

26. Rule 2-06 under Regulation S-X provides that for a period of seven years after an accountant concludes an audit or review of an issuer's financial statements, the accountant shall retain records relevant to the audit or review, including work papers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents and records (including electronic records), which:

A. Are created, sent or received in connection with the audit or review, and

B. Contain conclusions, opinions, analyses, or financial data related to the audit or review.

27. The rule requires that such documents shall be retained whether they support the auditor's final conclusions regarding the audit or review, or contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions regarding that matter or the audit or review. Nevertheless, in certain instances, Respondents failed to retain legible accounts receivable confirmation replies received from UTG customers that contained conclusions, opinions, and financial data relating to significant revenues and balance sheet assertions.

G. FINDINGS

28. Based on the foregoing, the Commission finds that Respondents Rotenberg and Bottini engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

29. Based on the foregoing, the Commission finds that Respondents Rotenberg and Bottini violated Rule 2-06 under Regulation S-X [17 C.F.R. § 210.2-06].

H. REMEDIAL EFFORTS

30. In determining to accept the Offers, the Commission considered the remedial efforts undertaken by Respondent Rotenberg, including its adoption of new client acceptance policies and procedures.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Bottini's and Respondent Rotenberg's Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 21C and 4C(a)(2) of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED, effectively immediately, that:

A. Respondent Bottini and Respondent Rotenberg cease and desist from committing or causing any violations and any future violations of Rule 2-06 under Regulation S-X [17 C.F.R. § 210.2-06];

B. Respondent Rotenberg is censured;

C. Respondent Rotenberg shall not issue any audit report, accept any audit engagement, or play a substantial role in the preparation or furnishing of any audit report for any issuer or registrant, U.S. or foreign, that files with the Commission and (i) has headquarters or principal executive offices located in the PRC, or (ii) has a subsidiary or component in the PRC the assets, revenues, or expenses of which constitute 20% or more of the consolidated assets, revenues, or expenses (terms as defined by PCAOB Rules and Notes to PCAOB Rules) of the registrant or issuer. For purposes of determining 20% or more of the consolidated assets, revenues, or expenses, this determination should be made at the end of the issuer's or registrant's most recently completed fiscal year.

D. Respondent Rotenberg shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. Section 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EFP Rotenberg, LLP as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to: Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

E. Respondent Bottini shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of $25,000 to the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. Section 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bottini as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to: Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

F. Respondent Bottini is denied the privilege of appearing or practicing before the Commission as an accountant.

G. After two years from the date of this order, Respondent Bottini may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Bottini's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Bottini, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Bottini, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in Bottini's or the firm's quality control system that would indicate that the Bottini will not receive appropriate supervision;

(c) Bottini has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

(d) Bottini acknowledges his responsibility, as long as Bottini appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

H. The Commission will consider an application by Respondent Bottini to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Bottini's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72507 / July 1, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15953

In the Matter of **Catalyst Group Holdings Corp.,** **Dynasty Capital, Inc.,** **Las Vegas Gaming, Inc.,** **Midwest Banc Holdings, Inc.,** **Northtech Industries, Inc.,** **Tactical Air Defense Services, Inc.,** **Tamalpais Bancorp, and** **United Western Bancorp, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Catalyst Group Holdings Corp., Dynasty Capital, Inc., Las Vegas Gaming, Inc., Midwest Banc Holdings, Inc., Northtech Industries, Inc., Tactical Air Defense Services, Inc., Tamalpais Bancorp, and United Western Bancorp, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Catalyst Group Holdings Corp. (CIK No. 1444703) is a void Delaware corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Catalyst Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a

Form 10-Q for the period ended May 31, 2010, which reported a net loss of $152,903 for the prior nine months.

2. Dynasty Capital, Inc. (CIK No. 1451644) is a delinquent Colorado corporation located in Morrison, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Dynasty Capital is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of $48,340 since its May 29, 2008 inception.

3. Las Vegas Gaming, Inc. (CIK No. 1103993) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Las Vegas Gaming is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of over $1 million for the prior three months.

4. Midwest Banc Holdings, Inc. (CIK No. 1051379) is a delinquent Delaware corporation located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Midwest Banc is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of over $107 million for the prior three months.

5. Northtech Industries, Inc. (CIK No. 1482728) is a revoked Nevada corporation located in Seattle, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Northtech Industries is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended June 30, 2010, which reported a net loss of $347,890 for the prior nine months.

6. Tactical Air Defense Services, Inc. (CIK No. 1077915) is a defaulted Nevada corporation located in Carson City, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tactical Air Defense is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $315,524 for the prior nine months.

7. Tamalpais Bancorp (CIK No. 1099980) is a California corporation located in San Rafael, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Talmalpais is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2009, which reported a net loss of over $37 million for the prior twelve months.

8. United Western Bancorp, Inc. (CIK No. 944725) is a Colorado corporation located in Thornton, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). United Western is delinquent in its periodic

filings with the Commission, having not filed any periodic reports since it filed a Form 8-A registration statement on October 29, 2010. As of June 20, 2014, the company's stock (symbol "UWBKQ") was traded on the over-the-counter markets. On March 2, 2012, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Colorado, and the case was still pending as of January 15, 2014.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3869 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15835

In the Matter of **ANTHONY J. DAVIAN,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

On April 10, 2014, the Securities and Exchange Commission ("Commission") deemed it appropriate and in the public interest that public administrative proceedings be instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Anthony J. Davian ("Respondent" or "Davian").

II.

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. RESPONDENT

1. Since July 2008, Davian has been the managing member of Davian Capital Advisors, LLC ("Davian Capital"), an unregistered investment adviser to several private investment funds formed by Davian, including Davian Capital L.P., Davian Capital L.P. II, Rubber City Gravity L.P., Rubber City Pure Alpha, L.P., Cleveland Gravity Fund L.P., Cleveland Pure Alpha Fund, L.P., Cleveland Pure Alpha II L.P., and Cleveland Precious Metals Fund, L.P. Davian, 34 years old, is a resident of Copley, Ohio.

B. ENTRY OF THE INJUNCTION

2. On March 24, 2014, a final judgment was entered by consent against Davian, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Anthony J. Davian, et al., Civil Action Number 5:13-CV-1762, in the United States District Court for the Northern District of Ohio.

3. The Commission's complaint alleged that, since 2011, Davian raised at least $1.5 million from investors for investment in several private funds managed by Davian Capital, provided investors with marketing materials containing fictitious returns and profits for the private funds, and misappropriated most of the money received from investors to pay for personal expenses.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Davian's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Davian be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72515 / July 2, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3868 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15955

In the Matter of SIGNALPOINT ASSET MANAGEMENT, LLC, JOHN W. HANDY, JR., JONATHAN C. TIMSON, DENNIS R. WALKER AND MICHAEL J. ORZEL, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against SignalPoint Asset Management, LLC, John W. Handy, Jr., Jonathan C. Timson, Dennis R. Walker and Michael J. Orzel (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities

Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. This matter concerns the failure to disclose certain individuals' control of a registered investment adviser, SignalPoint Asset Management, LLC ("SAM"), and their conflicts of interest in recommending that their clients invest with that firm. John W. Handy, Jr. ("Handy"), Jonathan C. Timson ("Timson") and Dennis R. Walker ("Walker") provided brokerage and advisory services as both registered representatives and investment adviser representatives of a dually-registered broker-dealer and investment adviser (the "Dual Registrant"). During 2007 and early 2008, Handy, Timson and Walker (collectively, the "Principals") sought permission from the Dual Registrant to form and own a separate investment advisory firm. After the Dual Registrant denied their ownership request, in August 2008, the Principals formed and registered SAM by selecting three nominee owners to act as SAM's majority members. The Principals provided all initial capital for SAM and engaged in other financial dealings with SAM and its members that evidenced their control over the firm. From the formation of SAM in August 2008 through at least 2013 (the "relevant period"), the Principals also controlled SAM by actively participating in its operations and directing its management and policies. However, in advising some of their advisory clients to invest with SAM, the Principals failed to disclose their control of SAM and conflicts of interest associated with their capitalization of and potential receipt of profits from SAM.

2. Similarly, SAM failed to disclose to its clients that the Principals controlled the firm. Specifically, SAM's Forms ADV during the relevant period failed to disclose the Principals as control persons and failed to accurately describe the extent of the Principals' participation in its day-to-day operations. Michael J. Orzel, who was SAM's chief compliance officer ("CCO") from November 2008 forward, was responsible for drafting and filing most of SAM's Forms ADV.

Respondents

3. SignalPoint Asset Management, LLC ("SAM"), a Missouri limited liability company headquartered in Springfield, Missouri, has been registered as an investment adviser

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[1] The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

with the Commission since August 2008. According to its most recently filed Form ADV, SAM serves as an investment adviser to over 1,800 separately managed accounts with combined assets under management of approximately $526 million.

4. John W. Handy, Jr. ("Handy"), age 51 and a resident of Madison, Wisconsin, is a co-founder and managing partner of Walnut Capital Management, LLC ("WCM"), which describes itself as a wealth management firm. Between 2007 and 2013, Handy was associated with the Dual Registrant as a registered representative and investment adviser representative ("IAR"). Since August 2013, Handy has been associated with SAM as an IAR.

5. Jonathan C. Timson ("Timson"), age 49 and a resident of Springfield, Missouri, is a co-founder and managing partner of WCM. Between 2007 and 2013, Timson was associated with the Dual Registrant as a registered representative and IAR. Since August 2013, Timson has been associated with SAM as an IAR.

6. Dennis R. Walker ("Walker"), age 56 and a resident of Verona, Missouri, is a co-founder and managing partner of WCM. Between 2007 and 2013, Walker was associated with the Dual Registrant as a registered representative and IAR. Since August 2013, Walker has been associated with SAM as an IAR.

7. Michael J. Orzel ("Orzel"), age 51 and a resident of Springfield, Missouri, is the chief executive officer, CCO and a member and owner of SAM. Since September 2008, Orzel has been associated with SAM as an IAR.

Facts

The Principals' Formation of WCM and Their Association with the Dual Registrant

8. WCM was formed by the Principals in March of 2007. In forming WCM, the Principals sought, among other things, to market to retail and institutional clients an algorithmic trading model that is now known as the "SignalPoint Process." Therefore, when establishing WCM and selecting a dually-registered broker-dealer and investment adviser with which to associate, the Principals sought to create what is commonly referred to as a hybrid model -- a money management firm that enabled them to process both commission-based business as registered representatives and fee-based business as IARs through the formation of a registered investment adviser ("RIA").

9. In the latter part of 2006, the Principals began negotiating with various broker-dealers and investment advisers, including the Dual Registrant, regarding their contemplated hybrid model. Even though the Dual Registrant informed the Principals that they could not register WCM as an RIA because the Dual Registrant did not support that type of business, the Principals chose to associate themselves with the Dual Registrant as registered representatives and IARs, and established WCM as a branch office of the Dual Registrant.

The Dual Registrant Denied the Principals' Request to Own a Separate Adviser

10. Within approximately six months after WCM's formation, several institutional entities expressed interest in investing through the SignalPoint Process. Accordingly, the Principals requested the Dual Registrant's approval to register WCM as an investment adviser to service these potential clients. However, the Dual Registrant again refused the Principals' request.

11. The Principals then sought the Dual Registrant's approval to form a separate RIA that would be owned and capitalized by the Principals, but staffed by unaffiliated investment advisory personnel. While the Dual Registrant did not object to the creation of a separate RIA, it prohibited the Principals from assuming an ownership interest in the adviser.

The Principals' Formation of SAM

12. Following the Dual Registrant's denial of their requested ownership of an RIA, the Principals formed and registered SAM in August 2008 by selecting three nominee owners (the "Nominees") to act as the majority members of SAM. Each of the Nominees assumed a 26.67% ownership interest in SAM. The Principals had oral understandings with their respective Nominees that should the Dual Registrant allow the Principals to eventually own SAM, the Nominees would transfer their ownership interests to the Principals. The Nominees did not provide any capital in exchange for their ownership interests and never participated in SAM's management or day-to-day operations.

13. Orzel was also designated as one of SAM's members and became the firm's CCO in November 2008, at which point he became responsible for drafting and filing SAM's Forms ADV.

14. Upon its formation, SAM became the owner of the SignalPoint Process and leased office space from WCM, the owner of the building where both entities conducted their businesses.

15. Throughout the relevant period, the Principals made several requests of the Dual Registrant to assume an ownership interest in SAM. However, each time, the Dual Registrant denied the Principals' request.

The Principals Exerted Control over SAM

The Principals' Financial Dealings with SAM and Its Members Evidenced Their Control

16. The Principals capitalized the original formation of SAM and its operations over the first year-and-a-half by each loaning SAM approximately $170,000. Without these funds, SAM would not have been able to conduct its day-to-day operations or pay the salaries of SAM's employees.

17. Following the initial capitalization of SAM and for the benefit of the Principals, the Nominees voluntarily participated in two transactions with the Principals' spouses to enable SAM to pay down a portion of its debt to the Principals. Specifically, in the third quarter of 2009, each Nominee, for no consideration, voluntarily transferred 1.67% of his interest in SAM to one of the Principals' spouses. Immediately thereafter, the Principals' spouses sold their collective 5.00% interest to a third party in exchange for $225,000.

18. In the first quarter of 2010, the Nominees and the Principals' spouses participated in a similar transaction with a different third party for the benefit of the Principals. Again, for no consideration, the Nominees voluntarily transferred a collective 4.00% of their interest in SAM to the Principals' spouses, who then immediately sold that interest to a third party in exchange for $180,000. As a result of these two transactions, each Principal obtained repayment of $135,000 on the balance of approximately $170,000 each Principal had loaned to SAM.

19. WCM and SAM also executed a written license agreement (the "License Agreement") under which SAM agreed to license the SignalPoint Process to WCM for the Principals' use with their clients. Although the License Agreement required WCM to pay SAM a 5% royalty on any income generated by the Principals through their use of the SignalPoint Process, SAM never required payment from WCM of any such royalties, again for the benefit of the Principals.

20. Furthermore, the Principals effectively influenced certain terms of the lease agreement between SAM and WCM and the promissory note that evidenced SAM's outstanding debt to the Principals.

The Principals' Active Participation in SAM's Operations and Decision-Making Further Evidenced Their Control

21. Throughout the relevant period, the Principals played a significant role in the day-to-day operations of SAM such that they effectively had the power to direct the management and policies of SAM. For example, throughout the relevant period:

a. The Principals actively participated in SAM's annual and quarterly board meetings during which all points of operation were discussed, including SAM's portfolio management, trading procedures, budget and financial projections, and sales and marketing strategies. In one instance, the Principals drafted the proposed agenda for the meeting.

b. The Principals actively participated in decisions related to SAM's personnel, including decisions affecting employee compensation, performance reviews, and job responsibilities. Similarly, the Principals assumed an active role in hiring and terminating SAM's employees.

c. One of the Principals participated as a member of SAM's investment committee, which met periodically to discuss portfolio construction and rebalancing and overall investment strategies.

d. The Principals actively participated in the sales and marketing decisions of SAM, including the creation of, and the participation on, a specific committee to assist SAM with its sales efforts. The Principals were also actively involved in negotiating a contract with one of SAM's distributors.

e. The Principals played an instrumental role in SAM's decision to form another registered investment adviser to manage a registered investment company.

The Principals Breached Their Fiduciary Duty to Their Clients Who Invested with SAM

22. As IARs of the Dual Registrant, the Principals were able to introduce their advisory clients to certain pre-approved third-party money managers. Through their agreements with the Dual Registrant, the Principals earned advisory fees on client assets invested with those third-party money managers. After the Dual Registrant approved SAM as a third-party money manager in October 2009, the Principals advised certain advisory clients to invest with SAM. Although the clients paid advisory fees to both the Dual Registrant and SAM, the Principals adjusted the fees such that their clients were not disadvantaged by their investments with SAM.

23. As IARs of the Dual Registrant, the Principals advised clients to invest with SAM in exchange for compensation that they received through their agreements with the Dual Registrant. Therefore, each of the Principals was acting as an "investment adviser" as that term is defined by Section 202(a)(11) of the Advisers Act.

24. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to exercise the utmost good faith in dealing with their clients, to disclose to their clients all material facts and to employ reasonable care to avoid misleading their clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963). This includes a duty to disclose existing and potential conflicts of interest, both of which are material. Id. at 191-92; In the Matter of Russell W. Stein, et al., Advisers Act Release No. 2114 (March 14, 2003); Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003).

25. When advising their advisory clients to invest with SAM, the Principals breached their fiduciary duty by failing to disclose all material facts concerning the extent of their ability to direct SAM's management and policies. The Principals also breached their fiduciary duty by failing to disclose their existing and potential conflicts of interest when advising clients to invest with SAM. In particular, they failed to disclose to clients that they had loaned substantial amounts of money to SAM and therefore stood to indirectly benefit from clients' payment of advisory fees to SAM. The Principals also failed to disclose that they were continuing to seek approval from the Dual Registrant to obtain ownership interests in SAM, which, if obtained, would entitle them to share in any profits that were derived from clients' payments of advisory fees to SAM.

<u>SAM Made False and Misleading Disclosures in Its Forms ADV Regarding Its Relationship with the Principals and Breached Its Fiduciary Duty</u>

26. During the relevant period, SAM filed several Forms ADV with the Commission. Orzel was the individual responsible for drafting and filing most of the Forms, each of which he signed certifying that the information and statements in them were true and correct. Orzel was fully aware of the Principals' financial dealings with SAM and the extent of their control over SAM's operations as described in paragraphs 16-21, above.

27. Item 10 of Form ADV, Part 1A requires that an adviser identify every person[2] that "controls" the adviser. Form ADV defines the term "control" to mean "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise." And according to Form ADV, "[a] person is presumed to control a limited liability company ('LLC') if the person...has contributed 25 percent or more of the capital of the LLC…."

28. Based on the Principals' financial dealings with SAM and their participation in SAM's operations and decision-making as described in paragraphs 16-21, above, the Principals had the power to direct the management and policies of SAM, such that they "controlled" the entity as defined by Form ADV. Furthermore, the Principals controlled SAM by virtue of their loans to SAM as described in paragraph 16, above, each of which accounted for more than a 25 percent contribution of the capital of SAM. However, during the relevant period, SAM failed to appropriately identify the Principals on its Forms ADV as persons who controlled its management and policies.

29. Beginning in March 2011 and subsequently throughout the relevant period, SAM filed with the Commission and delivered to clients and potential clients its Form ADV, Part 2A (i.e., its "firm brochure"). Orzel was the individual responsible for drafting and filing SAM's firm brochures.

30. Item 10 of Form ADV, Part 2A requires that an adviser describe any relationship that is material to the adviser's business or to its clients that the adviser has with any "related person" that is a broker-dealer or other investment adviser. Form ADV defines "related person" to include any "advisory affiliate," and further defines "advisory affiliate" to include "all persons directly or indirectly controlling" an investment adviser.

31. In each of its firm brochures filed with the Commission during the relevant period, SAM's response to item 10 disclosed that "SignalPoint receives periodic non-investment related business consulting from the principals of Walnut Capital Management, LLC." However, this disclosure was false and misleading because it: (a) did not accurately disclose the extent of the Principals' ability to direct SAM's management and policies; and (b) misrepresented that the Principals provided non-investment related consulting when, in fact, one

[2] Form ADV defines "person" as a natural person or a company.

of the Principals provided investment-related advice through his participation on SAM's investment committee.

32. By failing to inform its clients and potential clients of the information described in paragraphs 28 and 31, above, all of which was material, SAM breached its fiduciary duty.

Violations

33. As a result of the conduct described above, SAM, Handy, Timson and Walker willfully[3] violated Section 206(2) of the Advisers Act.

34. As a result of the conduct described above, SAM and Orzel willfully violated Section 207 of the Advisers Act.

Undertakings

35. The Principals have undertaken to:

a. Within thirty (30) days of the entry of the Order, the Principals shall provide a copy of this Order to each of their advisory clients who invested with SAM any time between October 2009 and the date of this Order via mail, electronic mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff; and

b. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and the Principals agree to provide such evidence. The certification and supporting material shall be submitted to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertaking.

36. SAM has undertaken to:

a. Within thirty (30) days of the entry of this Order, SAM shall provide a copy of the Order to each of SAM's existing advisory clients as of the entry of this Order via mail, electronic mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff; and

[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

b. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and SAM agrees to provide such evidence. The certification and supporting material shall be submitted to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertaking.

37. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings described above. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend of a federal holiday, the next business day shall be considered the last day.

38. In determining whether to accept the Offers of the Principals and SAM, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents SAM, Handy, Timson and Walker cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

B. Respondents SAM and Orzel cease and desist from committing or causing any violations and any future violations of Section 207 of the Advisers Act;

C. Respondents are hereby censured; and

D. Respondents Handy, Timson and Walker shall, within 10 days of the entry of this Order, each pay a civil money penalty in the amount of $60,000 to the United States Treasury. Respondent Orzel shall pay a civil money penalty in the amount of $35,000 to the United States Treasury in the following manner: (i) $20,000 shall be paid within 10 days of the entry of this Order; and (ii) the remaining $15,000 shall be paid within 180 days of the entry of this Order. If timely payment is not made by any Respondent, additional interest shall accrue on his penalty amount pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the relevant individual as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
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Payments by check or money order must be accompanied by a cover letter identifying the relevant individual as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72519 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15959

In the Matter of **TINA M. LIZZIO,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission"), deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Tina M. Lizzio ("Respondent" or "Lizzio").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Lizzio, which she committed while trading for Jeffrey W. Lynn ("Lynn"), and Lynn's proprietary trading firm, Worldwide Capital, Inc. ("Worldwide"). Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. On ten occasions from May 24, 2010 through February 23, 2012, Lizzio, on behalf of Worldwide and Lynn, bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period. These violations collectively resulted in ill-gotten gains to Lizzio of $28,864.

Respondent

2. Lizzio, age 44, is a resident of Boca Raton, Florida. From February 1996 to the end of 1998, and again from October 2009 through June 2012, Lizzio traded Lynn's capital on behalf of Worldwide.

Other Relevant Individual and Entity

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York, and Lynn's alter ego. Lynn formed Worldwide in 1993 for the purpose of investing and trading his own capital. It has never been registered with the Commission in any capacity.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Lizzio's Violations of Rule 105 of Regulation M

6. Lizzio was one of a number of individuals whom Lynn selected to trade his capital. Under the terms of Lizzio's arrangement with Lynn, Lynn funded Lizzio's trading and the two shared equally in the profits and losses generated by her trading.

7. At all relevant times, Lizzio's and Worldwide's principal strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, she purchased offering shares through numerous accounts in her name or the name of an entity through which she did business at large broker-dealers. By contrast, most of her sales, including short sales, of equity securities, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders." Regardless of the account in which the purchase or sale was executed, all of Lizzio's trades were funded by Lynn, and cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. From May 24, 2010 through February 23, 2012, Lizzio violated Rule 105 in connection with ten separate secondary or follow-on offerings, in each case by selling short shares of the issuers during the restricted period and then purchasing offering shares. The ten offerings were:

a. Wabash National Corporation's May 2010 offering;
b. Cypress Sharpridge Investments' June 2010 offering;
c. MarkWest Energy Partners LP's January 2011 offering;
d. StoneMor Partners LP's February 2011 offering;
e. Gartner Inc.'s February 2011 offering;
f. YPF Sociedad Anonima's March 2011 offering;
g. Newcastle Investment Corporation's March 2011 offering;
h. Energy Transfer Partners, LP's March 2011 offering;
i. Linn Energy, LLC's January 2012 offering; and
j. Cobalt International Energy Inc.'s February 2012 offering.

9. As a result of these violations, Lizzio received ill-gotten gains totaling $28,864, her share of the ill-gotten gains produced by the violative trades. Those ill-gotten gains consisted of: (a) the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an equivalent number of shares received in the offerings of the same issuer's shares; and (b) in those offerings where the number of shares Lizzio received in the offerings exceeded the number of shares she sold short during the restricted period, the discount she obtained to the market price of the issuer's shares.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Lizzio cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Lizzio shall pay disgorgement of $28,864, prejudgment interest of $1,548, and a civil monetary penalty in the amount of $17,319 (for a total of $47,731) to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made ten (10) days following the date on which this Order is entered. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Tina M. Lizzio as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72516 / July 2, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3563 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15956

In the Matter of **W. MARK MILLER, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against W. Mark Miller ("Respondent" or "Miller") and also deems it appropriate to issue an order of forthwith suspension of Miller pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order

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[1] Rule 102(e)(2) provides in pertinent part: "Any ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Order of Suspension pursuant to Rule 102(e)(2) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. W. Mark Miller ("Miller"), age 60 is a resident of Plano, Texas. Miller was a Texas-licensed Certified Public Accountant ("CPA") until his license was revoked on December 31, 1990 for nonpayment of fees. Miller has never held any securities licenses and is not registered with the Commission in any capacity. In October 2007, Miller became CFO of Provident Royalties, LLC ("Provident") and President in September 2008.

2. On July 1, 2009, a complaint was filed against Provident in connection with an offering fraud in which Respondent was involved. Respondent played a role in the fraud alleged in *SEC v. Provident Royalties, LLC, et al.*, Civil Action Number 3:09CV1238-L, in the United States District Court for the Northern District of Texas, but Respondent was not named as a defendant in that action.

3. The Commission's complaint alleged that, from at least June 2006 until January 2009, in connection with a series of preferred stock and limited partnership interests, Provident misappropriated investor funds, falsely stated to investors the use of their invested funds, failed to disclose the role of an unnamed principal, failed to disclose the unnamed principal's interest (through various entities he controlled) in some properties, and otherwise engaged in a variety of conduct that operated as a fraud and deceit on investors. As CFO and president of Provident, Respondent handled and misappropriated investor funds, solicited securities transactions by participating in sales presentations and conference calls, and helped to negotiate and structure specific securities transactions. While performing these functions with Provident Asset Management, LLC, Respondent was neither a registered broker-dealer or otherwise acting as an associated person of a registered broker-dealer.

4. On February 12, 2013, Miller pleaded guilty to one count of misprision of a felony in violation of Title 18 United States Code, Section 4 before the United States District Court for the Eastern District of Texas, in *United States v. W. Mark Miller*, Crim. Information No. 4:12CR00166-003. On July 16, 2013, a judgment in the criminal case was entered against Miller. He was sentenced to a prison term of six (6) months followed by one year of supervised release and ordered to make restitution in the amount of $2,300,000. Restitution has been paid.

5. The count of the criminal information to which Miller pleaded guilty alleged, among other things, that from about January 1, 2009 through February 3, 2009, Miller knew of Provident defrauding investors and obtaining money and property by means of materially false and misleading statements in connection with the fraudulent sale of limited partnership

interests and preferred stock underlying the Commission's complaint described in Paragraph 2 above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Miller's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Miller be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; barred from participating in any offering of a penny stock, including; acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

In view of the foregoing, the Commission also finds that Respondent Miller has been convicted of misprision of a felony, which is a misdemeanor involving moral turpitude within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Respondent Miller is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72521 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15961

In the Matter of **WILLIAM W. VOWELL,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission"), deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against William W. Vowell ("Respondent" or "Vowell").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Vowell, which he committed while trading for Jeffrey W. Lynn ("Lynn"), and Lynn's proprietary trading firm, Worldwide Capital, Inc. ("Worldwide"). Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. On eight occasions from September 23, 2010 through September 8, 2011, Vowell, on behalf of Worldwide and Lynn, bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period. These violations collectively resulted in ill-gotten gains to Vowell of $51,519.

Respondent

2. Vowell, age 41, is a resident of Manasquan, New Jersey. From 2006 to February 2013, he traded for Worldwide.

Other Relevant Individual and Entity

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York, and Lynn's alter ego. Lynn formed Worldwide in 1993 for the purpose of investing and trading his own capital. It has never been registered with the Commission in any capacity.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Vowell's Violations of Rule 105 of Regulation M

6. Vowell was one of a number of individuals whom Lynn selected to trade his capital. Under the terms of Vowell's arrangement with Lynn, Lynn funded Vowell's trading and the two shared equally in the profits and losses generated by Vowell's trading.

7. At all relevant times, Vowell's and Worldwide's principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, Vowell created numerous "alter ego" corporate entities for the purpose of purchasing offering shares through accounts in their names at large broker-dealers. By contrast, most of Vowell's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders. Regardless of the account in which the purchase or sale was executed, all of Vowell's trades were funded by Lynn, and cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. From September 23, 2010 through September 8, 2011, Vowell violated Rule 105 in connection with eight separate secondary or follow-on offerings, in each case by selling short shares of the issuers during the restricted period and then purchasing offering shares. The eight offerings were:

a. Petroleo Brasileiro's September 2010 offering;
b. American Capital Agency Corp.'s January 2011 offering;
c. StoneMor Partners LP's February 2011 offering;
d. YPF Sociedad Anonima's March 2011 offering;
e. Newcastle Investment Corporation's March 2011 offering;
f. American International Group, Inc.'s May 2011 offering;
g. Arch Coal, Inc.'s June 2011 offering; and
h. Calumet Specialty Products Partners, LP's September 2011 offering.

9. As a result of these violations, Vowell received ill-gotten gains totaling $51,519, his share of the ill-gotten gains produced by the violative trades. Those ill-gotten gains consisted of: (a) the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an equivalent number of shares received in the offerings of the same issuer's shares; and (b) in those offerings where the number of shares Vowell received in the offerings exceeded the number of shares he sold short during the restricted period, the discount he obtained to the market price of the issuer's shares.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Vowell cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Vowell shall pay disgorgement of $51,519, prejudgment interest of $4,427, and a civil monetary penalty in the amount of $30,911 (for a total of $86,857) to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made in the following installments: (i) $20,000 shall be paid within ten (10) days following the date on which this Order is entered; (ii) $16,714.25 shall be paid within ninety (90) days following the date on which this Order is entered; (iii) $16,714.25 shall be paid within one hundred and eighty (180) days following the date on which this Order is entered; (iv) $16,714.25 shall be paid within two hundred and seventy days (270) following the date on which this Order is entered; and (v) $16,714.25 shall be paid within three hundred and sixty (360) days following the date on which this Order is entered. If payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying William W. Vowell as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72518 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15958

In the Matter of CARMELA BROCCO, Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission"), deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Carmela Brocco ("Respondent" or "Brocco").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Brocco, which she committed while trading for Jeffrey W. Lynn ("Lynn"), and Lynn's proprietary trading firm, Worldwide Capital, Inc. ("Worldwide"). Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. On twelve occasions from May 29, 2009 through March 29, 2011, Brocco, on behalf of Worldwide and Lynn, bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period. These violations collectively resulted in ill-gotten gains to Brocco of $215,233.

Respondent

2. Brocco, age 40, is a resident of East Meadow, New York. From approximately 2002 to 2010, Brocco worked for Worldwide, initially as the office manager, and, beginning in 2005, as office manager and trader.

Other Relevant Individual and Entity

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York, and Lynn's alter ego. Lynn formed Worldwide in 1993 for the purpose of investing and trading his own capital. It has never been registered with the Commission in any capacity.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Brocco's Violations of Rule 105 of Regulation M

6. Brocco was one of a number of individuals whom Lynn selected to trade his capital. Under the terms of Brocco's arrangement with Lynn, Lynn funded Brocco's trading and the two shared equally in the profits and losses generated by her trading.

7. At all relevant times, Brocco's and Worldwide's principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, Brocco created numerous "alter ego" corporate entities for the purpose of purchasing offering shares through accounts in their names at large broker-dealers. By contrast, most of Brocco's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders. Regardless of the account in which the purchase or sale was executed, all of Brocco's trades were funded by Lynn, and cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. From May 29, 2009 through March 29, 2011, Brocco violated Rule 105 in connection with twelve separate secondary or follow-on offerings, in each case by selling short shares of the issuers during the restricted period and then purchasing offering shares. The twelve offerings were:

a. Terex Corp.'s May 2009 offering;
b. Penn Virginia GP Holdings, L.P.'s September 2009 offering;
c. Citigroup Inc.'s December 2009 offering;
d. Strategic Hotels & Resorts, Inc.'s May 2010 offering;
e. Wabash National Corporation's May 2010 offering;
f. Cypress Sharpridge Investments' June 2010 offering;
g. Government Properties Income's August 2010 offering;
h. Petroleo Brasileiro's September 2010 offering;
i. Stillwater Mining Company's December 2010 offering;
j. MarkWest Energy Partners LP's January 2011 offering;
k. American Capital Agency Corp.'s January 2011 offering; and
l. Energy Transfer Partners, LP's March 2011 offering.

9. As a result of these violations, Brocco received ill-gotten gains totaling $215,233, her share of the ill-gotten gains produced by the violative trades. Those ill-gotten gains consisted of: (a) the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an equivalent number of shares received in the offerings of the same issuer's shares; (b) in those offerings where the number of shares Brocco received in the offerings exceeded the number of shares she sold short during the restricted period, the discount she obtained to the market price of the issuer's shares; and (c) in certain offerings where the offering price exceeded the price at which Brocco had sold the stock short during the restricted period, the additional loss she avoided by purchasing the offering shares at a discount to the market price.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Brocco cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Brocco shall pay disgorgement of $215,233, prejudgment interest of $27,056, and a civil monetary penalty in the amount of $129,140 (for a total of $371,429) to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made in the following installments: (i) $100,000 shall be paid within twenty-one (21) business days following the date on which this Order is entered; (ii) $20,000 shall be paid within one hundred and eighty (180) days following the date on which this Order is entered; and (iii) $251,429 shall be paid within three hundred and sixty (360) days following the date on which this Order is entered. If payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Carmela Brocco as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72520 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15960

In the Matter of **STEVEN J. NIEMIS,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission"), deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Steven J. Niemis ("Respondent" or "Niemis").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

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1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Niemis, which he committed while trading for Jeffrey W. Lynn ("Lynn"), and Lynn's proprietary trading firm, Worldwide Capital, Inc. ("Worldwide"). Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. On seventeen occasions from August 6, 2010 through March 13, 2012, Niemis, on behalf of Worldwide and Lynn, bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period. These violations collectively resulted in ill-gotten gains to Niemis of $130,842.

Respondent

2. Niemis, age 38, is a resident of Jupiter, Florida. From approximately 2003 to August 2012, Niemis was one of a number of individuals who traded Lynn's capital. Before he started trading for Lynn, Niemis had worked as a computer salesman.

Other Relevant Individual and Entity

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York, and Lynn's alter ego. Lynn formed Worldwide in 1993 for the purpose of investing and trading his own capital. It has never been registered with the Commission in any capacity.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

5. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Niemis's Violations of Rule 105 of Regulation M

6. Niemis was one of a number of individuals whom Lynn selected to trade his capital. Under the terms of Niemis's arrangement with Lynn, Lynn funded Niemis's trading and the two shared equally in the profits and losses generated by Niemis's trading.

7. At all relevant times, Niemis's and Worldwide's principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, Niemis created numerous "alter ego" corporate entities for the purpose of purchasing offering shares through accounts in their names at large broker-dealers. By contrast, most of Niemis's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders. Regardless of the account in which the purchase or sale was executed, all of Niemis's trades were funded by Lynn, and cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. From August 6, 2009 through March 13, 2012, Niemis violated Rule 105 in connection with seventeen separate secondary or follow-on offerings, in each case by selling short shares of the issuers during the restricted period and then purchasing offering shares. The seventeen offerings were:

a. Oshkosh Corporation's August 2009 offering;
b. IntraLinks Holding, Inc.'s December 2010 offering;
c. Noranda Aluminum Holding Corp.'s December 2010 offering;
d. Stillwater Mining Company's December 2010 offering;
e. American Capital Agency Corp.'s January 2011 offering;
f. LDK Solar Co., Ltd.'s January 2011 offering;
g. Molycorp, Inc.'s February 2011 offering;
h. Energy Transfer Partners, L.P.'s March 2011 offering;
i. Cobalt International Energy Inc.'s April 2011 offering;
j. American International Group, Inc.'s May 2011 offering;
k. Arch Coal, Inc.'s June 2011 offering;
l. Five Star Quality Care, Inc.'s June 2011 offering;
m. Excel Trust, Inc.'s June 2011 offering;
n. Newcastle Investment Corporation's September 2011 offering;
o. Linn Energy, LLC's January 2012 offering;
p. Cobalt International Energy Inc.'s February 2012 offering; and
q. American Capital Mortgage Investment Corp.'s March 2012 offering.

9. As a result of these violations, Niemis received ill-gotten gains totaling $130,842, his share of the ill-gotten gains produced by the violative trades. Those ill-gotten gains consisted of: (a) the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an equivalent number of shares received in the offerings of the same issuer's shares; and (b) in those offerings where the number of shares Niemis received in the offerings

exceeded the number of shares he sold short during the restricted period, the discount he obtained to the market price of the issuer's shares.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Niemis cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Niemis shall pay disgorgement of $130,842, prejudgment interest of $5,893, and a civil monetary penalty in the amount of $78,505 (for a total of $215,240) to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made ten (10) days following the date on which this Order is entered. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Steven J. Niemis as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72517 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15957

In the Matter of **DEREK W. BAKARICH,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission"), deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Derek W. Bakarich ("Respondent" or "Bakarich").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Bakarich, which he committed while trading for Jeffrey W. Lynn ("Lynn"), and Lynn's proprietary trading firm, Worldwide Capital, Inc. ("Worldwide"). Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. On nine occasions from August 12, 2009 through February 23, 2012, Bakarich, on behalf of Worldwide and Lynn, bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period. These violations collectively resulted in ill-gotten gains to Bakarich of $16,231.

Respondent

2. Bakarich, age 44, is a resident of Duluth, Georgia. From the late 1990s until early 2014, Bakarich was a trader for Worldwide.

Other Relevant Individual and Entity

3. Worldwide is a Delaware corporation with its principal office in Nassau County, New York, and Lynn's alter ego. Lynn formed Worldwide in 1993 for the purpose of investing and trading his own capital. It has never been registered with the Commission in any capacity.

Legal Framework

4. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Short Selling in Connection with a Public Offering, 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." Id. at 45094.

Bakarich's Violations of Rule 105 of Regulation M

6. Bakarich was one of a number of individuals whom Lynn selected to trade his capital. Under the terms of Bakarich's arrangement with Lynn, Lynn funded Bakarich's trading and the two shared equally in the profits and losses generated by Bakarich's trading.

7. At all relevant times, Bakarich's and Worldwide's principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings as well as follow-on and secondary offerings. Accordingly, Bakarich created numerous "alter ego" corporate entities for the purpose of purchasing offering shares through accounts in their names at large broker-dealers. By contrast, most of Bakarich's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional traders. Regardless of the account in which the purchase or sale was executed, all of Bakarich's trades were funded by Lynn, and cleared and settled in a Worldwide master account at Worldwide's prime broker.

8. From August 12, 2009 through February 23, 2012, Bakarich violated Rule 105 in connection with nine separate secondary or follow-on offerings, in each case by selling short shares of the issuers during the restricted period and then purchasing offering shares. The nine offerings were:

a. Ocwen Financial Corporation's August 2009 offering;
b. STR Holdings Inc.'s April 2010 offering;
c. Petroleo Brasileiro's September 2010 offering;
d. LDK Solar Co., Ltd.'s January 2011 offering;
e. Newcastle Investment Corporation's March 2011 offering;
f. American International Group, Inc.'s May 2011 offering;
g. Arch Coal, Inc.'s June 2011 offering;
h. Linn Energy, LLC's January 2012 offering; and
i. Cobalt International Energy Inc.'s February 2012 offering.

9. As a result of these violations, Bakarich received ill-gotten gains totaling \$16,231, his share of the ill-gotten gains produced by the violative trades. Those ill-gotten gains consisted of the difference between the proceeds from the improper restricted period short sales, and the amounts paid on an equivalent number of shares received in the offerings of the same issuer's shares.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Bakarich cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act;

B. Bakarich shall pay disgorgement of $16,231, prejudgment interest of $757, and a civil monetary penalty in the amount of $9,739 (for a total of $26,727) to the Securities and Exchange Commission, for transmission to the United States Treasury. Payment shall be made ten (10) days following the date on which this Order is entered. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Derek W. Bakarich as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72529 / July 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15962

In the Matter of **Radient Pharmaceuticals Corporation,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Radient Pharmaceuticals Corporation ("RXPC" or "Respondent").

II.

In anticipation of the institution of these proceedings, RXPC has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, RXPC consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds:

1. RXPC (CIK No. 838879) is a void Delaware corporation located in Tustin, California with a class of securities registered with the Commission under Exchange Act Section 12. As of April 9, 2014, the common stock of RXPC (symbol RXPC) was quoted on OTC Link (formerly "Pink Sheets") operated by

OTC Markets Group Inc., had ten market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. RXPC has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended December 31, 2011.

IV.

Section 12(j) of the Exchange Act provides as follows:

> The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of RXPC's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3871 / July 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15963

In the Matter of **THOMAS D. RENISON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Thomas D. Renison ("Renison" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Renison, age 60, is a resident of Glastonbury, Connecticut. From January 2009 to May 2010, Renison was associated with Equity Services, Inc., an entity registered with the Commission both as an investment adviser (File No. 801-41722) and a broker-dealer (File No.008-14286). From September 1993 through March 2008, Renison was an associated person of various other investment advisers registered with the Commission. Concurrently, Renison founded and operated an unregistered firm in Hartford, Connecticut, called Connecticut Financial Group, through which he advised clients on the investment of their retirement funds and sold annuities, variable annuities, and life insurance.

2. Renison consented to an order issued by the Securities Administrator of the State of Maine on October 22, 2012, *In re Thomas D. Renison*, No. COR-11-7846 (the "Maine Order"). The Maine Order permanently bars Renison from associating with any issuer, broker-dealer or investment adviser in Maine.

3. The Maine Order found that Renison committed at least five violations of the Maine Uniform Securities Act, including provisions that, among other things, prohibit fraudulent and deceptive conduct. Specifically, it found that, in May 2008, Renison sold an investment, which was a security, to a 77-year-old retired Maine resident (the "Client") for $600,000. The Maine Order further found that, in selling the security, Renison used a prospectus that made untrue statements of material fact and failed to disclose all material facts necessary to avoid misleading the purchaser.

4. Renison received, and used for his own purposes, a total of $105,000 of the funds invested by the Client.

5. Subsequent to the sale of the investment and continuing during a period of time when he was associated with a registered investment adviser, Renison made a series of lulling statements in response to requests by the Client that his invested funds be repaid in accordance with the agreed upon terms.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Renison's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Renison be, and hereby is:

barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72541 / July 3, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3872 / July 3, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31149 / July 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15433

In the Matter of

CHARIOT ADVISORS, LLC
and
ELLIOTT L. SHIFMAN,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940

I.

On August 21, 2013, the Commission instituted public administrative and cease-and-desist proceedings pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Chariot Advisors, LLC ("Chariot Advisors") and Elliott L. Shifman ("Shifman") (collectively, the "Respondents"). Respondents have submitted Offers of Settlement which the Commission has determined to accept.

II.

Solely for the purpose of settling these proceedings, and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

This proceeding relates to certain misrepresentations and omissions of material fact about a proposed investment strategy made by a registered investment adviser, Chariot Advisors, and its control person, Shifman, in connection with the process under Section 15(c) of the Investment Company Act by which Chariot Advisors obtained the approval to be the investment adviser of a registered fund, the Chariot Absolute Return Currency Portfolio (the "Chariot Fund" or "Fund").

Under Section 15(c) of the Investment Company Act, a registered fund's board of directors is required annually to evaluate and approve the fund's advisory agreement, and the fund's adviser is required initially, and thereafter annually, to provide the board with information reasonably necessary to make that evaluation (hereafter, the "15(c) process"). In December 2008 and again in May 2009, during the Chariot Fund's 15(c) process, Shifman, acting on behalf of Chariot Advisors, misrepresented Chariot Advisors's readiness to implement the investment strategy Chariot Advisors proposed for 20% of the Chariot Fund—namely, Chariot Advisors's ability to conduct algorithmic currency trading.

During 2008 and 2009, Shifman was in discussions with several third party providers of currency trading platforms about Chariot Advisors' potential use of an algorithm. At the time of Shifman's representations to the board, however, Chariot Advisors was still in the process of obtaining an algorithm or computer model capable of engaging in the currency trading that Shifman described during the 15(c) process. Shifman failed to disclose the nascent nature of his efforts to obtain an algorithm from other sources. Moreover, after the Fund launched in July 2009, a company owned by Shifman hired an individual trader who was allowed to use discretion on trade selection and execution. Respondents' misstatements also led directly to misrepresentations and omissions in the Chariot Fund's registration statement and prospectus filed with the Commission.

As a result, Chariot Advisors violated Section 15(c) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and caused the Fund to violate Section 34(b) of the Investment Company Act. Shifman, likewise, violated Section 206(2) of the Advisers Act, caused the Fund to violate Section 34(b) of the Investment Company Act, and caused Chariot Advisors to violate Section 15(c) of that Act.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

RESPONDENTS

1. Chariot Advisors, LLC has been registered with the Commission as an investment adviser since September 2008. Between July 2009 and August 2011, Chariot Advisors was the investment adviser to the Chariot Absolute Return Currency Portfolio, a registered open-end investment company, which was a series of the Northern Lights Variable Trust. Chariot Advisors is based in Cary, North Carolina.

2. Elliott L. Shifman was the sole owner and operator of Chariot Advisors from its founding in September 2008 until June 30, 2009. Shifman, 49 years of age, was trained as an actuary and is a resident of Raleigh, North Carolina. During the relevant period, Shifman was a registered representative associated with SummitAlliance Securities, LLC, a registered broker-dealer.

OTHER RELEVANT ENTITIES

3. Northern Lights Variable Trust ("Northern Lights") is registered with the Commission as an open-end series management investment company. Organized as a Delaware statutory trust headquartered in Omaha, Nebraska, Northern Lights serves as an umbrella to a series of registered funds, providing to those funds turnkey services, including fund governance through the Northern Lights Board of Trustees ("Northern Lights Board" or "Board"). Between December 2008 and August 2011, the Chariot Fund was a series of Northern Lights and the Northern Lights Board served as the Chariot Fund's Board.

4. Chariot Absolute Return Currency Portfolio was a registered investment company and a series of Northern Lights from June 30, 2009 until it was liquidated on August 31, 2011.

INVESTMENT ADVISORY CONTRACT APPROVAL PROCESS UNDER SECTION 15(c) OF THE INVESTMENT COMPANY ACT

5. Section 15(c) of the Investment Company Act requires that the terms of any contract or agreement, whereby a person undertakes regularly to serve or act as investment adviser of a registered investment company, and any renewal thereof, be approved by a vote of the majority of a fund's disinterested directors or trustees at a meeting called for the purpose of voting on such approval.

6. The Investment Company Act assigns specific responsibilities to both the directors of a registered investment company and the adviser seeking approval for purposes of the directors' evaluation of the terms of an advisory contract. As part of the approval process, Section 15(c) imposes a duty on all directors to request and evaluate such information as may reasonably be necessary for the directors to evaluate the terms of the adviser's contract. In parallel fashion, Section 15(c) imposes a duty on the adviser to furnish such information as may reasonably be necessary for the directors to evaluate the contract.

While Section 15(c) does not define what is "reasonably necessary" to evaluate a contract's terms, the Commission requires directors considering an advisory contract to consider a number of factors, including "the nature, extent, and quality of the services to be provided by the investment adviser." See Disclosure Regarding the Approval of Investment Advisory Contracts by Directors of Investment Companies, SEC Rel. No. IC-26486 (June 30, 2004); Form N-1A, Item 27(d)(6)(i). The process by which a board of directors evaluates and approves the renewal of an investment advisory contract is commonly referred to as the "15(c) process."

FORMATION OF CHARIOT ADVISORS

7. In 2006, Shifman developed for Midland National Life Insurance Company two variable annuities, called the Vector I and II, which he sold to investors. Each Vector series allowed annuitants to invest their principal in various sub-accounts.

8. In September 2008, Shifman founded Chariot Advisors as a registered investment adviser. Thereafter, Chariot Advisors offered Vector annuity investors various risk-based models that allocated invested funds among the various sub-accounts. Chariot Advisors developed these models by combining trading signals that it purchased from several independent technical analysts.

9. Shortly after founding Chariot Advisors, Shifman began developing the Chariot Fund as a mutual fund that would be offered to investors in the Vector I and II variable annuities.

10. Chariot Fund's initial investment objective was to achieve absolute positive returns in all market cycles by investing approximately 80% of the Fund's assets under management in short-term fixed income securities and using the remaining 20% of the assets under management to engage in algorithmic currency trading.

CREATION OF THE CHARIOT FUND

11. In late 2008, Shifman approached Northern Lights with a request that it create the Chariot Fund as a series of Northern Lights, and approve Chariot Advisors as the new Fund's adviser.

12. On November 5, 2008, Shifman submitted responses to a new fund questionnaire to Northern Lights's counsel in which he indicated that the proposed fund would allocate 20% of its assets to currency trading, while investing the remaining 80% in fixed income securities.

13. On November 13, 2008, counsel for the Northern Lights Board requested in a letter certain information from Shifman for the Board's consideration of Chariot's proposed advisory contract at the Board's upcoming meeting scheduled for December 15, 2008.

14. In connection with this request, counsel for the Board told Shifman that this information was needed pursuant to Section 15(c) of the Investment Company Act, which required that the Board request, and that Chariot Advisors provide, all information that is reasonably necessary in connection with the decision to approve the advisory agreement between Chariot Advisors and the Chariot Fund. In a contemporaneous letter, counsel for the Board also told Shifman that he "ha[d] a duty to update the Board of Trustees throughout the year if there is a material change in the information provided" by Chariot Advisors.

15. Shifman responded to the Board in writing and prepared a PowerPoint presentation, which he made to the Board at its December 15, 2008 meeting. In the written submission, Shifman described the proposed new fund as "provid[ing] a currency arbitrage overlay on top of fixed income securities. The program is algorithmic in nature and searches for arbitrage opportunities on currency's [sic] in different markets." The written submission also indicated that an appropriate benchmark for the new fund's performance would be the S&P 500 Index.

16. Shifman's December 15, 2008 PowerPoint presentation to the Board gave further details on the Chariot Fund's proposed investment methodology. It stated that the Fund "will be a currency overlay product" and will "add[] 'alpha' by trading a[n] . . . algorithm" similar to one already used by an unrelated third party to trade the assets of a separate hedge fund Shifman also controlled.

17. The PowerPoint further stated that, by using this methodology, the Fund would be a "byproduct of extensive research of recent changes in FX market structure due to the adaptation of algorithmic and high frequency trading."

18. The PowerPoint then listed bullet points describing what Shifman described as "competitive" features of the Fund based on its use of algorithmic trading. These included, among others: "(i) High Frequency Algorithmic Trading enables [Chariot Advisors] to seek out untapped sources of alpha while controlling drawdowns; (ii) Algorithmic trading models allow 24/5.5 access to the markets extending trading opportunities and minimizing emotions associated with non-systematic trading; (iii) Dynamic strategy model automatically adjust[s] trading behavior of sub-strategies to exploit current market conditions and volatility; and (iv) Intelligent execution Logic ensures best execution with minimum slippage."

19. Shifman's representations in person before the Board were substantially similar to what he set forth in both the December 15(c) submission and his PowerPoint presentation. Shifman told the Board that the investment objective of the Chariot Fund is to seek consistent positive absolute returns through various market cycles and that Chariot Advisors would achieve this investment objective through two complementary strategies, namely, by investing primarily in short-term high quality fixed income securities and by engaging in proprietary foreign currency arbitrage. Shifman further represented that Chariot Advisors's currency trading strategy involves a computer model

and algorithm that permits Chariot to make split-second trades and take advantage of currency arbitrage opportunities.

20. At the time of the presentation, Shifman did not possess or have a contract in place to access an algorithmic trading platform as described in the 15(c) materials presented to the Board. Although Shifman had been discussing, prior to the December Board meeting, the possibility of Chariot Advisors using a high frequency currency trading platform developed and managed by a third party, that platform was still under development. In addition, Shifman had no finalized agreement in place to use the unproven platform for the Chariot Fund. Despite having no assurance that the platform would be ready and available for his use, Shifman did not disclose these contingencies in his 15(c) materials or presentation.

21. Following Shifman's presentation, the Board approved the Chariot Fund as a series of Northern Lights. It further concluded that Chariot Advisors's proposed management fee was acceptable in light of the quality of the services the Chariot Fund expected to receive from Chariot Advisors, and consequently approved the Fund's advisory agreement with Chariot Advisors.

22. Two weeks after the December Board meeting, the third party with whom Shifman had been discussing potential use of a high frequency currency trading platform informed Shifman that the platform was being permanently shut down. Shifman did not, however, inform the Northern Lights Board of that development or otherwise signal a material change in the nature, extent and quality of services that Chariot Advisors could provide.

TRANSFER OF CHARIOT ADVISORS

23. After the Northern Lights Board approved the Chariot Fund and its advisory agreement with Chariot Advisors but before the Fund launched, Shifman took steps to sell Chariot Advisors. On May 18, 2009, Shifman entered an agreement to transfer ownership of Chariot Advisors, effective June 30, 2009.

24. The pending change of control of Chariot Advisors prompted the Board to reconsider Chariot Advisors's advisory contract with the Fund. At the Board's request, Shifman made a second 15(c) submission on May 26, 2009.

25. The second 15(c) submission contained essentially the same claims about Chariot Advisors and the Chariot Fund that Shifman advanced in the December 15(c) submission except that in the second written submission Shifman now stated that "[t]he Fund invests in 80% diversified Treasuries or other AAA securities and currency." Shifman also proposed that Chariot Advisors charge the Fund a 1.50% advisory fee on assets under management and a 0.40% distribution fee, justifying the increase in the advisory fee by representing that the Fund's investment strategy required more work to implement than he had earlier anticipated. Additionally, the second 15(c) submission

explained that, with the change of control of Chariot Advisors, the new owner rather than Shifman would operate Chariot Advisors and manage the Fund.

26. At the time of the second 15(c) submission, using information and language provided by Shifman, the Fund's counsel drafted a prospectus for a proposed mutual fund for which Shifman was attempting to obtain the approval of the Northern Lights Board. Shifman reviewed and approved the draft prospectus. As described in the proposed prospectus, the envisioned mutual fund was to be advised by Chariot Advisors and have the same investment strategy as the Chariot Fund. The prospectus stated:

> Electronic and algorithmic trading have dramatically changed many of the traditional assumptions and processes in the currency markets. The adviser believes that currency markets are rarely efficient in the short-term, and that it is possible to generate excess returns by exploiting various short-term structural inefficiencies and non-random price action in the FX market. Using high frequency market data, the adviser has created models of the FX market that it believes are able to analyze the price formation process of exchange rates in real-time.

27. In early 2009, the third party that Shifman had been primarily relying on to provide a high frequency currency trading platform shut the platform down. Prior to the May 2009 meeting with the Northern Lights Board, however, the third party had, at Shifman's request, begun work on a medium frequency currency trading platform for use by the Chariot Fund. While the platform was being developed specifically for Shifman, as of May, there was no finalized agreement in place giving Chariot Advisors use of the developmental platform.

28. As part of the second 15(c) submission, Shifman prepared and presented to the Northern Lights Board at its May 2009 meeting a modified version of the PowerPoint presentation he had used at the December 2008 meeting. Among other things, the PowerPoint contained essentially the same claims as the December 2008 submission concerning the competitive benefits of algorithmic trading. Shifman made some changes to the PowerPoint to reflect that Chariot Advisors would be doing medium frequency currency trading rather than the high frequency trading he described in the December 2008 meeting. He did not bring the differences to the Board's attention, however, and Chariot Advisors' 15(c) materials and PowerPoint were still replete with references to high frequency trading.

29. Contrary to what Shifman told the Board in both the December 2008 and May 2009 meetings, Chariot Advisors did not have an algorithm or model in place capable of conducting the currency trading that he described for the Chariot Fund. At the time of both meetings with the Northern Lights Board, Shifman was, at best, in discussions with outside sources to obtain such an algorithm or model. He had not chosen any particular model, and he did not have a contract or agreement that would have

allowed the Chariot Fund to use any of them. Yet, Shifman failed to disclose to the Board the preliminary and prospective nature of his claims with respect to Chariot Advisors' ability to conduct algorithmic currency trading.

30. The ability to conduct currency trading for the Chariot Fund was particularly significant for the Fund's performance because, in the absence of an operating history by which to judge the Fund's performance, the Board focused instead on Chariot Advisors's reliance on models in evaluating the advisory contract. The Chariot Fund's ability to conduct currency trading was also important because the Fund's performance was benchmarked to the S&P 500 Index.

31. On June 5, 2009, the Chariot Fund filed with the Commission a registration statement and prospectus on Form N-1A that stated:

> The Advisor will seek profits by forecasting short-term movements in exchange rates and changes in exchange rate volatility aided by quantitative models. . . . The Advisor identifies potential foreign currency trading investment opportunities by using proprietary medium-frequency trading models that the Advisor believes will produce superior risk-adjusted returns in a variety of market conditions. The proprietary currency trading models use statistical analysis to uncover expected profitable trading opportunities. Large volumes of trading statistics are continually captured, monitored and evaluated before trading occurs. The models seek to identify pricing inefficiencies and other non-random price movements that signal potentially profitable trading opportunities. The strategy attempts to profit from short-term pricing fluctuations using medium-frequency trading rather than from longer-term price trends.

32. The registration statement and prospectus were prepared and filed based on information provided by Shifman, who reviewed the registration statement and prospectus before they were filed with the Commission. On June 30, 2009, the Chariot Fund's Registration Statement and Prospectus became effective. Also on June 30, 2009, Chariot legally changed ownership to its new owner.

33. On July 15, 2009, the Chariot Fund was launched. Chariot Advisors funded the Chariot Fund by reallocating approximately $17 million in assets in clients' annuities to the Fund, which was a sub-account on Midland's variable annuity platform.

34. For at least the first two months after the Fund's launch, an individual recruited and employed by a company owned by Shifman conducted currency trading for the Fund using a technical analysis, rules-based approach, but the trader had, and

exercised, human discretion when trading. Shifman had interviewed the trader prior to her being hired.

35. The trader traded currencies for the Fund until September 30, 2009 when she was terminated due to poor trading performance. Subsequently, Chariot Advisors employed a third party who utilized a computer algorithm to conduct currency trading on behalf of the Chariot Fund.

VIOLATIONS

36. As a result of the conduct described above, Chariot Advisors violated Section 15(c) of the Investment Company Act, which makes it the duty of an investment adviser to a registered investment company to furnish such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser to such company.

37. As a result of the conduct described above, Shifman caused Chariot Advisors's violations of Section 15(c) of the Investment Company Act.

38. As a result of the negligent conduct described above, Chariot Advisors and Shifman caused the Chariot Fund's violations of Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

39. As a result of the negligent conduct described above, Chariot Advisors violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which states that it will constitute a fraudulent, deceptive or manipulative act within the meaning of Section 206(4) for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

40. As a result of the negligent conduct described above, Shifman willfully violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. See SEC v. Steadman, 967 F.2d 636, 643, n.5 (D.C. Cir. 1992).

41. As a result of the negligent conduct described above, Chariot Advisors violated Section 206(2) of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act , and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Chariot Advisors cease and desist from committing or causing any violations and any future violations of Sections 15(c) of the Investment Company Act and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;

B. Respondent Chariot Advisors cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act;

C. Respondent Shifman cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

D. Respondent Shifman cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 34(b) of the Investment Company Act;

E. Respondent Shifman be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization for a period of 12 months, effective on the second Monday following entry of this Order;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order; and

suspended from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of 12 months, effective on the second Monday following the entry of this Order; and

F. Respondent Shifman shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-deliver or mail to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Shifman as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Pat Huddleston, Senior Trial Counsel, Division of Enforcement, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Disapproved
Commissioner Piwowar
Not participating

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 72550; File No. SR-OCC-2014-802)

July 7, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing Concerning the Consolidation of the Governance Committee and Nominating Committee into a Single Committee, Changes to the Nominating Process for Directors, and Increasing the Number of Public Directors on The Options Clearing Corporation's Board of Directors

On May 8, 2014, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2014-802 ("Advance Notice") pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act" or "Title VIII")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Advance Notice was published for comment in the Federal Register on June 3, 2014.[3] The Commission did not receive any comments on the Advance Notice publication. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

OCC is proposing to: (i) amend its By-Laws and Governance Committee Charter to combine the current Nominating Committee ("NC") and Governance Committee

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1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(1)(i). OCC is a designated financial market utility and is required to file advance notices with the Commission. See 12 U.S.C. 5465(e). OCC also filed the proposal contained in the Advance Notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. See SR-OCC-2014-09. The Commission published notice of the proposed rule change in the Federal Register on May 30, 2014 and did not receive any comments on the proposal. See Exchange Act Release No. 34-72242 (May 23, 2014), 79 FR 31166 (May 30, 2014) (SR-OCC-2014-09).

3 Release No. 34-72268 (May 28, 2014), 79 FR 31998 (June 3, 2014) (SR-OCC-2014-802) ("Notice").

("GC") to establish a single Governance and Nominating Committee ("GNC"), (ii) make changes concerning OCC's nomination process for Directors, and (iii) increase the number of Public Directors on OCC's Board of Directors ("Board") from three to five. The proposed modifications are based on recommendations from the GC in the course of carrying out its mandate of reviewing the overall corporate governance of OCC and recommending improvements to the structure of OCC's Board. In part, the GC's recommendations stem from suggestions of an outside consultant that was retained to review and report on OCC's governance structure in relationship to industry governance practices. To conform to these proposed changes, OCC is also proposing to make certain edits to its Stockholders Agreement, Board of Directors Charter, and Fitness Standards for Directors.

Currently, the GC operates pursuant to its own Charter.[4] The NC is not a Board level Committee and does not operate pursuant to a charter; however, provisions in Article III of OCC's By-Laws prescribe certain aspects of the NC's structure and operation. OCC is proposing to apply to the GNC many of the existing provisions of the relevant By-Laws and GC Charter that apply to the NC and GC. Where OCC is proposing amendments to the existing By-Laws and GC Charter, they are discussed below.

Certain provisions of Article III of OCC's By-Laws govern the role the NC plays in nominating persons as Member Directors[5] on OCC's Board as well as the composition

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4 Securities Exchange Act Release Nos. 71030 (Dec. 11, 2013), 78 FR 7612 (Dec. 16, 2013) (SR-OCC-2013-18); 71083 (Dec. 16, 2013), 78 FR 77182 (Dec. 20, 2013) (SR-OCC-2013-807).

5 Under Article III, Section 2 every Member Director must be either a Clearing Member or a representative of a Clearing Member Organization.

and structure of the NC itself. The NC is required to endeavor to achieve balanced representation in its Member Director and Non-Director Member nominees, giving due consideration to business activities and geographic distribution.

Presently, the NC is composed of seven total members: one Public Director and six Non-Director Members.[6] The Public Director member, who is nominated by the Executive Chairman with the approval of a majority of the Board, generally serves a three year term, unless she ceases to be a Public Director. The six Non-Director Members nominated by the NC and selected by OCC's stockholders are divided into two equal classes of three members, and the classes serve staggered two year terms.[7] By comparison, the GC Charter requires the current GC to have no fewer than five directors and to include at least one Public Director, at least one Exchange Director, and at least one Member Director. It also provides that no Management Directors may serve on the Committee.

OCC's Board currently has 19 members consisting of nine Member Directors, five Exchange Directors, three Public Directors, and two Management Directors.[8] Based

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6 Under Sections 4 and 5 of Article III, a Non-Director Member of the NC must be a representative of a Clearing Member and no person associated with the same Clearing Member Organization as a member of the NC may be nominated by the NC for a position as a Member Director on the Board of Directors or a Non-Director Member of the NC for the ensuing year.

7 This tiered structure eliminated the complete turnover of the members of the NC each year and fostered greater continuity among its elected members. Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319 (July 19, 1991) (SR-OCC-91-11).

8 Public Directors may not be affiliated with any national securities exchange or national securities association or any broker or dealer in securities, and OCC's Executive Chairman and President, who are Management Directors. See OCC By-Laws Article III, Section 6A.

on recommendations from the GC in the course of review of OCC's overall corporate governance, OCC is proposing certain amendments detailed below to merge OCC's NC and GC into a single GNC and increase the number of Public Directors from three to five.

A. Proposed Amendments Common to the By-Laws and Other OCC Governance Documents

Certain of the proposed changes would amend the existing By-Laws as well as other governance documents of OCC. For example, conforming edits would be made throughout the By-Laws and GC Charter to delete NC and GC references and in many cases those references would be replaced with references to the GNC.

1. GNC Composition

The new GNC would be composed of a minimum of three total members: at least one Public Director, at least one Exchange Director and at least one Member Director. To reflect this change, OCC would eliminate in Section 4 of Article III of the By-Laws the requirement for six Non-Director Members, add requirements for at least one Member Director and one Exchange Director, and modify the current requirement for one Public Director to instead require that there must be at least one Public Director. The proposed composition for the GNC already mirrors the existing composition specified in the GC Charter. Therefore, no changes are proposed to the current GC Charter in that respect, other than the elimination of the requirements that the GNC have no fewer than five directors. In its filing with the Commission, OCC stated that limitation would be eliminated with the goal of providing the Board with greater flexibility to determine the optimal size and composition of the GNC, so long as the composition also facilitates diverse representation by satisfying the proposed requirement for at least one GNC representative from each of the Member Director, Exchange Director, and Public

Director categories. The prohibition on Management Directors serving on the GC would continue to apply to the GNC.

2. GNC Member Appointment Process and Term Limits

The members of the GNC would be appointed annually by the Board from among certain Board members recommended by the GNC after consultation with OCC's Executive Chairman. GNC Members would serve at the pleasure of the Board. The GNC's Chairman ("GNC Chair") would be designated from among the GNC's Public Directors. Provisions implementing these changes would be added to Section 4 of Article III of the By-Laws to entirely supplant the class and term limit structure and nominations process that currently applies to the NC and its Non-Director Members and Public Director, and references to Non-Director Members would be removed from the By-Laws. Section II.A. The GC Charter would also be amended to reflect this structure for GNC nominations and appointments.

3. Number of Public Directors and Member Directors

OCC is proposing to amend its By-Laws to increase the number of Public Directors on its Board from three to five. It is also making certain other changes related to the overall composition of the Board and the classification and term of office of Public Directors. The proposed change in the number of Public Directors from three to five would reconstitute OCC's Board with a total of 21 directors. OCC believes that, as indicated in its initial proposal to add Public Directors to its Board,[9] Public Directors broaden the mix of viewpoints and business expertise that is represented on the Board. Accordingly, OCC believes that the input and expertise of two more Public Directors will

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9 Securities Exchange Act Release No. 30328 (January 31, 1992), 57 FR 4784 (February 7, 1992) (SR-OCC-1992-02).

further benefit OCC in the administration of its affairs in respect of the markets that it serves, and in the discharge of its obligations as a systemically important financial market utility.

The proposed changes would remove a provision that, under certain conditions, automatically adjusts the number of Member Directors serving on the Board. OCC's By-Laws currently require that if the aggregate number of Exchange Directors and Public Directors equals at least nine, the total number of Member Directors must be automatically adjusted to exceed that number by one.[10] This provision would be removed.[11] OCC believes that its removal will provide the Board with greater flexibility to determine its optimal composition. The proposed changes also remove a provision that reduces the number of Member Directors if the number is above nine and exceeds the sum of the number of Exchange Directors and the number of Public Directors by more than one, because the number of Member Directors would be fixed at nine.

OCC is also proposing certain amendments to its Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes would be made to recognize the merger of the NC and GC into the GNC as a standing Committee of the Board and reflect the role it would play in OCC's director nomination process. The proposed modifications to the Board Charter and Fitness Standards would reflect the increase in the number of Public Directors

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10 OCC By-Laws Article III, Section 1.

11 OCC also proposes to make corresponding changes to Article III, Section 3 of its By-Laws under which it would remove provisions that provide for the classification and term of office of Member Directors where the number of Member Directors increases based on the provision in Article III, Section 1 that OCC proposes to delete.

serving on the Board from three to five and the removal of the provision that currently is designed under certain conditions to automatically adjust the number of Member Directors serving on the Board. The criteria specified in the Fitness Standards for Directors, Clearing Members and Others for use in considering individuals nominated to be Member Director would also be revised for consistency with the criteria proposed to be added to Article III, Section 5 of the By-Laws, discussed below, designed to achieve balanced Board representation.

The Stockholders Agreement also contains proposed amendments to replace the term Chairman with Executive Chairman. This parallels a separate proposed amendment by OCC to implement this change in its By-Laws and Rules, but a consolidated amendment to the Stockholders Agreement is proposed for ease of administration.

B. Proposed Amendments to By-Laws Only

As explained in more detail below, certain of the proposed changes would require amendments only to OCC's existing By-Laws. One such example is that Sections 2 and 5 of Article III of the By-Laws would be amended to remove prohibitions against representation of the same Clearing Member Organization on the Board and the NC.[12] This barrier would be eliminated since GNC members will be selected from among the members of the Board under the new approach.

1. Balanced Representation

The NC's responsibility to endeavor to achieve balanced representation among Clearing Members on the Board would be carried over to the GNC. Specifically, the GNC would be required to ensure that (1) not all of the Member Directors are from

12 A Clearing Member Organization is a Clearing Member that is a legal entity rather than a natural person.

members having the largest volume of business with OCC during the prior year and (2) the mix of Member Directors includes members primarily engaged in agency trading on behalf of retail investors.

2. Nomination and Election Process

The Board would appoint members to the GNC from among the Board's members who are recommended by the GNC. This change requires certain proposed modifications to the nomination and election process currently reflected in Article III, Section 5 of the By-Laws. Changes are also proposed that would change the deadlines for nominations of Member Directors by both the GNC and Clearing Members, and OCC would preserve the petition process by which Clearing Members may nominate additional candidates to be Member Directors on the Board. In recognition of the elimination of the concept of Non-Director Members, several provisions in Section 5 of Article III of the By-Laws addressing the ability of stockholders to elect or nominate Non-Director Members of the NC would be deleted. In relevant part, however, these provisions would be retained to the extent they apply to the ability of stockholders under certain conditions to nominate and elect Member Directors of the Board.

3. Public Directors

Proposed changes to Section 6A of Article III of the By-Laws would require the GNC to nominate Public Directors for election by OCC's stockholders and to use OCC's fitness standards in making such nominations. Presently, OCC's Executive Chairman nominates Public Directors with Board approval. Changes are also proposed to help clarify the class structure and term limits of Public Directors that are independent of changes proposed to facilitate the formation of the GNC.[13]

The proposed changes to Article III, Section 6A of the By-Laws would also provide for the classification of the two new Public Directors. One of the new Public Directors will be designated as a Class I Public Director, and the other will be designated as a Class III Public Director. The proposed changes also establish the times at which the successors of the two new Public Directors will be elected. The successor of the new Public Director that is a Class III Public Director will be elected at the 2015 annual meeting of stockholders, and the successor of the new Public Director that is a Class I Public Director will be elected at the 2016 annual meeting.

4. Disqualifications and Filling Vacancies and Newly Created Directorships

The disqualification provisions in Article III, Section 11 of the By-Laws would be revised to reflect that any determination to disqualify a director would be effective and result in a vacancy only if the GNC makes a recommendation for disqualification in addition to an affirmative vote for disqualification by a majority of the whole Board. The By-Laws currently provide that if a Member Director vacancy is filled by the Board, the person filling the vacancy will serve until the next scheduled election for the relevant class of Member Director and a successor is elected. However, if the term for that class of Member Director extends beyond the Board's next annual meeting the vacancy must

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13 These changes would specify that, aside from the Class II Public Director who was elected to the Board at the 2011 annual meeting, two other Public Directors were appointed to the Board prior to its 2013 annual meeting, one designated as a Class I Public Director and the other designated as a Class III Public Director. Generally, the three year terms for Public Directors with staggered expiration for each class would be preserved; however, an exception would be added for the initial Class I and III Public Directors.

be filled by a person who is recommended by the Nominating Committee. Proposed changes to these terms in respect of the GNC would require the Board in all cases to appoint a person who is recommended by the GNC. Similarly, Public Director vacancies would be required to be filled by the Board as generally provided for in Section 6A of Article III of the By-Laws, including with regard to candidates being nominated by the GNC using OCC's fitness standards for directors. Provisions concerning filling vacancies with respect to the NC would be deleted, consistent with its elimination in favor of the GNC.

5. Ministerial Changes

The proposed changes to Article III of the By-Laws also include certain ministerial changes. A reference to stockholder exchanges in the interpretation and policy to Section 6 would be replaced by the defined term Equity Exchanges, and a reference in Section 14 to notice by telegram would be changed to facsimile to reflect current means of communication.

C. Proposed Amendments to the GC Charter Only

Certain of the proposed amendments relating to the creation of the GNC would apply only to OCC's existing GC Charter. These amendments are discussed below.

1. GNC Purpose

The statement of purpose in the GC Charter would be revised to reflect the GNC's larger scope of responsibilities. The existing GC purpose of reviewing the overall corporate governance of OCC would be maintained, along with language clarifying that this review would be performed on a regular basis and that recommendations concerning Board improvements should be made when necessary. The GNC Charter would also provide that the GNC assists the Board in identifying, screening and reviewing individuals qualified to serve as directors and by recommending candidates to the Board for nomination for election at the annual meeting of stockholders or to fill vacancies. The GNC Charter would also specify that the GNC would develop and recommend to the Board, and oversee the implementation of, a Board Code of Conduct.

2. GNC Membership and Organization

The requirement in the GC Charter that the GC hold four meetings annually would be modified to also permit the GNC to call additional meetings as it deems appropriate.[14] The GC Charter requirement for regular reporting to the Board on Committee activities by the GC chair or a designee would be revised in favor of placing the reporting responsibility solely on the GNC Chair and requiring the GNC Chair to make timely reports to the Board on important issues discussed at GNC meetings. Taking into consideration certain pre-established guidelines in the GNC Charter, the GNC Chair would also be given responsibility for determining whether minutes should be recorded at any executive session. Aside from this exception for executive sessions, GNC meeting minutes would be required to be recorded. The GNC Charter would also create a position to be filled by an OCC officer who would assist the GNC and liaise between it and OCC's staff.

3. GNC Authority

As in the case of the existing GC, the GNC would have authority to inquire into any matter relevant to its purpose and responsibilities in the course of carrying out its duties. The GNC Charter would further specify that in connection with any such inquiry

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14 This would bring the Governance and Nominating Committee Charter in line with the Charters of OCC's other Board Committees.

the GNC would have access to all books, records, facilities and personnel of OCC. Unlike the existing GC Charter, the GNC Charter would not provide express authority for the GNC to rely on members of OCC's management for assistance. Instead, this relationship between the GNC and OCC's management would be more specifically addressed through the role of the newly created staff liaison position. Additional revisions to the GC Charter would also establish that the GNC Chair would not have discretion to take unilateral action on behalf of the Committee, even in special circumstances.

4. Board Composition

Without limiting the GNC to particular activities, the GNC Charter would specify certain responsibilities meant to guide the GNC in achieving its purposes, including with respect to its role in the development of the Board's composition. The GNC's Charter would require it to pursue development of a Board comprised of individuals who have a reputation for integrity and represent diverse professional backgrounds as well as a broad spectrum of experience and expertise. The GNC Charter would also prescribe more detailed responsibilities designed to further this goal. For example, the GNC would be required to conduct periodic reviews of the composition of the Board against the goal, including whether the Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity and other qualities.[15]

The GNC would be required to recommend policies and procedures to the Board for identifying and reviewing Board nominee candidates, and it would implement and oversee the effectiveness of those policies, including with regard to criteria for Board

[15] The GNC would also review director conflicts of interest and the manner in which any such conflicts are to be monitored and resolved.

nominees. Using criteria approved by the Board, the GNC would identify, screen and review persons who it determines are qualified to serve as directors. This process would also extend to incumbent directors concerning any potential re-nomination. In all cases, the GNC would only recommend candidates to the Board for nomination for election after consulting with OCC's Executive Chairman.

In the event that a sitting director offers to resign because of a change in occupation or business association, the GNC would be responsible for reviewing whether continued service is appropriate and making a recommendation of any action, consistent with OCC's By-Laws and Rules, that should be taken by the Board. The GNC would also undertake periodic reviews of term limits for certain directors and recommend changes to these limits where appropriate.

5. Governance Practices

The GNC would have responsibility for reviewing the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practices. Currently, this is a GC function, and certain GC Charter amendments are proposed to help further detail the GNC's review responsibilities. These include a general responsibility to recommend changes, as the GNC deems appropriate, to the Board concerning Committee Charters. This would include the GNC Charter, which the GNC would be required to review annually.[16] In connection with a periodic review of Board Committee structure, the GNC would advise the Board regarding related matters of structure, operations and charters. Furthermore, and in each case after consultation with OCC's Executive Chairman, the GNC would

16 As part of the annual review, the GNC would also submit the GNC Charter to the Board for re-approval, including any changes the GNC deems advisable.

recommend to the Board for its approval certain directors for Committee service as well as for assignment as Committee chair persons.

The GNC would develop and recommend to the Board the annual process used by the Board and Board Committees for self-evaluation of their role and performance in the governance of OCC. The GNC would also be responsible for coordinating and providing oversight of that process. Corporate governance principles applicable to OCC would be developed by the GNC for recommendation to the Board, and the GNC would review them at least once a year.

6. Other Proposed GC Charter Amendments

The GNC Charter would require the GNC to regularly evaluate its performance and the performance of its individual members and provide results of such assessments to the Board. It would also require an annual report to be prepared by the GNC and delivered to the Board regarding the GNC's activities for the preceding year, and the GNC would be required to include a statement that it carried out all of its GNC Charter responsibilities. In addition to such responsibilities, the GNC would generally be empowered to perform any other duties that it deems necessary or appropriate and consistent with the GNC Charter or as may otherwise be further delegated to it by the Board.

II. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of Title VIII is instructive.[17] The stated

[17] See 12 U.S.C. 5461(b).

purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities ("FMUs") and strengthening the liquidity of systemically important FMUs.[18]

Section 805(a)(2) of the Clearing Supervision Act[19] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[20] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[21] ("Clearing Agency Standards").[22] The Clearing Agency Standards became effective on January 2, 2013 and require registered clearing

18 Id.

19 12 U.S.C. 5464(a)(2).

20 12 U.S.C. 5464(b).

21 12 U.S.C. 5464(a)(2).

22 Rule 17Ad-22, 17 CFR 240.17Ad-22. Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11).

agencies that perform central counterparty ("CCP") services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[23] As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[24]

The proposed changes in the Advance Notice may result in changes that will improve OCC's overall risk management process, and therefore may promote robust risk management. A Board-level committee likely will be in a better position to make well-informed nomination decisions. Members of the GNC will themselves be members of the Board, and, thus, have personal insight and experience into the types of experience and credentials that would useful on the Board and be better able to assess the current needs of the Board. A Board comprised of Directors with more relevant skills and credentials that are better able to evaluate OCC's risks may promote more robust risk management.

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23 The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors of the Federal Reserve System ("Federal Reserve") governing the operations of designated DFMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (August 2, 2012).

24 12 U.S.C. 5464(b).

Adding two Public Directors to the Board and eliminating the provision which ensured the number of Member Directors would outnumber the combined number of Exchange and Public Directors by one may also result in improved risk management processes and therefore may promote robust risk management. Additional emphasis on Public Directors may result in more independent views on the risks OCC presents being brought to the Board's attention for discussion and management of those risks. Moreover, the combined GNC and the additional emphasis on Public Directors should also aid in identifying any risks and inefficiencies in the current governance structure and making recommendations to the full Board to help mitigate those risks and eliminate any such inefficiencies.

The GNC's periodic reviews of the composition of the Board, including whether the Board reflects the appropriate balance of types of directors, business specialization, technical skills, diversity and other qualities, may help the GNC achieve balanced representation and a diversity among Member Directors. Maintaining balanced representation and having diversity among Member Directors may help the Board better evaluate and identify the risks OCC presents, and improve overall risk management.

In addition, the changes proposed in the Advance Notice may reduce OCC's contribution to systemic risk because they enhance the transparency of OCC's governance arrangements. The Commission believes that providing additional insight into OCC's governance arrangements may have this effect by allowing Members and other market participants to better assess risks at OCC, to comment on OCC's operations, and otherwise to advocate for improved overall risk management.

Commission Rule 17Ad-22(d)(8), adopted as part of Clearing Agency Standards, requires that a registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to "have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures."[25] The Commission believes that the changes proposed in this advance notice should help OCC fulfill these transparency requirements.

III. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[26] that the Commission DOES NOT OBJECT to advance notice proposal (SR-OCC-2014-802) and that OCC is AUTHORIZED to implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR-OCC-2014-09), whichever is later.

By the Commission.

Kevin M. O'Neill

Kevin O'Neill
Deputy Secretary

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25 17 CFR 240.17Ad-22(d)(8).

26 12 U.S.C. 5465(e)(1)(I).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72557 / July 8, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3565 / July 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15965

In the Matter of

CHILD, VAN WAGONER & BRADSHAW, PLLC, RUSSELL E. ANDERSON, CPA, and MARTY VAN WAGONER, CPA,

Respondents.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Child, Van Wagoner & Bradshaw, PLLC ("CVB"), Russell E. Anderson, CPA ("Anderson"), and Marty Van Wagoner, CPA ("Van Wagoner") (collectively "Respondents"), pursuant to Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

102(e)(1)(ii) of the Commission's Rules of Practice and also against CVB and Anderson pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.[2]

II.

After an investigation, the Division of Enforcement alleges:

SUMMARY

1. Between March 2010 and June 2011, CVB, an accounting firm based in Salt Lake City, Utah, and Anderson and Van Wagoner, two of its partners, served as the independent auditors of Yuhe International, Inc. ("Yuhe"), a China-based company whose stock was previously registered with the Commission and traded on Nasdaq. These proceedings arise from Respondents' failures to comply with Public Company Accounting Oversight Board ("PCAOB") Auditing Standards ("PCAOB Standards") in their 2009 and 2010 audits of Yuhe. Among other failures, CVB and Anderson failed to: (a) properly plan the audits and supervise assistants; (b) properly assess audit risk and materiality; (c) properly consider fraud and illegal acts; and (d) act with due professional care. In his role as engagement quality review partner, Van Wagoner failed to act with due professional care because he was aware, or should have been aware, of audit deficiencies but did not address them. Additionally, by virtue of his failure to comply with professional standards during Yuhe's 2010 audit, Van Wagoner also violated the engagement quality review standard set forth in AS 7.

2. The Respondents' failures in the 2009 audit arose principally because CVB and Anderson effectively performed no audit work of their own and instead relied on the audit work papers of Yuhe's prior auditor which had begun the 2009 audit, but then abruptly resigned without completing it. Even though neither CVB nor Anderson planned, performed, or supervised the prior firm's audit work, they took that firm's work papers, performed at best a cursory review of them, and then issued an audit report containing an unqualified opinion on Yuhe's financial statements—all within only approximately three weeks of accepting the Yuhe engagement.

3. CVB and Anderson also performed a deficient audit of Yuhe's 2010 financial statements. During planning for the 2010 audit, CVB and Anderson assessed Yuhe as lacking effective internal controls such that no controls reliance could be utilized in performing the audit. Specifically, they documented within CVB's planning work papers that "the auditor is concerned about the risk of material misstatement" due to Yuhe's "inability to perform proper procedures necessary to produce a reliable financial statement." They also noted that Yuhe personnel appeared to lack the experience and ability to create financial statements using accounting principles generally accepted in the United States ("US GAAP"). Yet, despite this assessment, CVB and Anderson failed to implement auditing procedures that addressed the risks identified.

[2] Rule 102(e)(1)(ii) and (iii) provide, in pertinent part, that: (ii) "The Commission may… deny, temporarily or permanently, the privilege of appearing or practicing before it... to any person who is found... to have engaged in unethical or improper professional conduct;" and (iii) "to have willfully violated, …any provision of the Federal securities laws or the rules and regulations thereunder."

They performed an audit based upon the basic audit procedures within their prescribed checklists without modification, failed to extend procedures to address the known risk of material misstatement, and relied heavily on management representations. They also failed to provide meaningful direction and supervision to the foreign audit staff CVB hired to perform fieldwork in China (hereafter, "Foreign Audit Staff"). Despite these deficiencies, and without the application of due professional care in his role as engagement quality reviewer, Van Wagoner provided his concurrence on the issuance of the audit report.

RESPONDENTS

4. Child, Van Wagoner & Bradshaw, PLLC, located during the pertinent period in Salt Lake City, Utah, is a Utah professional limited liability company and public accounting firm formerly registered with the PCAOB. CVB acted as Yuhe's independent auditor initially from March 12, 2008 to December 7, 2009, and then again from March 9, 2010 to June 17, 2011. CVB performed public company audits[3] of, and issued audit reports containing unqualified opinions on, the financial statements of Yuhe for Yuhe's fiscal years ending December 31, 2008, December 31, 2009, and December 31, 2010. CVB resigned as Yuhe's independent auditor on June 17, 2011, following public disclosure by Yuhe that a purported business acquisition by Yuhe had, in fact, never occurred. During the time of its Yuhe audits, CVB had four audit partners and two non-audit partners. CVB ceased to do public company audits as of August 1, 2012. CVB is no longer registered with the PCAOB, but remains "active" and in "good standing" in the records of the State of Utah Division of Corporations and Commercial Code.

5. Russell E. Anderson, age 53, is a Certified Public Accountant ("CPA") licensed to practice in Utah. Anderson served as CVB's engagement partner for the 2008, 2009, and 2010 Yuhe audits and was responsible for making all significant decisions regarding the engagements. During 2009 and 2010, Anderson was also CVB's "quality control partner." He is a resident of West Valley City, Utah.

6. Marty Van Wagoner, age 52, is a CPA licensed to practice in Utah. Van Wagoner served as CVB's engagement quality review partner for the 2008, 2009 and 2010 audits of Yuhe. He is a resident of Eagle Mountain, Utah.

RELEVANT ENTITY

7. Yuhe International, Inc. is a Nevada corporation whose principal offices are located in Weifang, Shandong Province, People's Republic of China.[4] Yuhe sells day-old chicken broilers, *i.e.*, chickens that are bred and raised for meat production, and claims to be the largest

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[3] A public company audit is defined as an engagement to audit the financial statements of an "issuer" as that term is defined in Section 3(a)(8) of the Exchange Act.

[4] On October 18, 2013, the Commission filed a civil injunctive action against Yuhe and its Chief Executive Officer ("CEO"), alleging violations of the antifraud provisions of the Securities Act of 1933 and the Exchange Act, as well as the books and records, internal controls, and reporting provisions of the Exchange Act. *SEC v. Yuhe Int'l, Inc. and Gao Zhentao*, Civil Action No. 1:13-CV-01598-RCL (D.D.C., filed Oct. 18, 2013).

supplier of day-old broilers in China. All of Yuhe's operations are carried out in China. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and was traded on the Nasdaq Capital Market. On October 20, 2010, Yuhe completed a registered public offering in the United States of more than four million shares of its common stock at a price of $7 per share, raising approximately $27 million. On July 21, 2011, Nasdaq suspended trading of Yuhe's common stock, and, on December 16, 2011, Nasdaq filed a Form 25 with the Commission to delist the common stock, which is now quoted on OTC Link. Yuhe's fiscal year ends on December 31.

FACTS

Background

8. CVB audited Yuhe's financial statements for its fiscal year ending December 31, 2008, and issued an audit report containing an unqualified opinion. In order to perform field work in China for this audit, CVB contracted with accounting personnel in a Shanghai, China independently owned member firm of an international public accounting network firm (hereafter, "Shanghai Office"). In conducting Yuhe's 2008 audit, CVB did not place any reliance on Yuhe's internal controls due to CVB's assessment that Yuhe's internal controls were ineffective. As a result, CVB conducted a fully substantive audit and did not reduce any substantive testing in its audit procedures based upon assessment or testing of internal controls.

9. CVB continued its engagement as Yuhe's auditor for Yuhe's 2009 fiscal year, and conducted interim reviews of Yuhe's financial statements for that fiscal year's first, second, and third quarters. However, in late 2009 during Yuhe's fourth fiscal quarter, the Shanghai Office was acquired by another international public accounting firm (hereafter, the "Acquiring Firm").

10. Following this acquisition, on December 7, 2009, the Audit Committee of Yuhe's Board of Directors appointed the Acquiring Firm as Yuhe's independent auditor. Under the engagement agreement, the Acquiring Firm was to perform the 2009 year-end audit and opine on the 2009 financial statements. Thereafter, from December 2009 through February 2010, the individuals who were formerly the Shanghai Office personnel working on Yuhe's audits, but now employees of the Acquiring Firm, planned and executed the Yuhe audit under the Acquiring Firm's supervision and in accordance with the Acquiring Firm's audit approach.

11. During its audit procedures and fieldwork, the Acquiring Firm identified in Yuhe's books and records, as of February 2010, ongoing related party transactions which Yuhe had earlier asserted in a public filing would be discontinued by December 31, 2009. In the prior year, Yuhe's management had concluded that the related party transactions constituted violations of Section 402 of the Sarbanes-Oxley Act of 2002 and that a material weakness existed over the lack of review and approval of related party loans, due to Yuhe's management permitting these transactions without Board of Director approval. On March 5, 2010, the Acquiring Firm resigned from the engagement, and Yuhe's Form 8-K filing cited the prohibited related party loan, the material weakness over the review and approval of such loans, and a material weakness related to Yuhe's inability to properly close its books as the reasons for the Acquiring Firm's resignation. At the

time of its resignation, the Acquiring Firm's audit field work for the 2009 audit of Yuhe was incomplete.

12. Yuhe's due date for filing its 2009 Form 10-K with the Commission was March 31, 2010, less than a month after the Acquiring Firm's resignation. With such a short time period before its filing deadline, Yuhe approached CVB to return as its independent auditor and complete the 2009 audit. Respondents accepted Yuhe's request and, on March 9, 2010, CVB re-engaged as Yuhe's independent auditor. Only twenty-one days later, on March 30, 2010, Anderson, with Van Wagoner's concurrence, issued CVB's audit report containing an unqualified opinion on Yuhe's financial statements for the 2009 fiscal year.

CVB and Anderson's 2009 Audit of Yuhe

13. Auditing standards require an auditor to adequately plan and perform an audit and properly supervise assistants. AU § 311.01.[5] Audit planning involves developing an overall strategy for the expected conduct and scope of the audit. The nature, extent, and timing of planning vary with the size and complexity of the entity, experience with the entity, and knowledge of the entity's business. In planning the audit, the auditor should consider, among other matters, the entity's business, accounting policies and procedures, and planned assessed level of control risk. AU § 311.03. Supervision involves directing the efforts of assistants who are involved in accomplishing the objectives of the audit and determining whether those objectives are accomplished. AU § 311.01, .11-.13. Elements of supervision include, among others, instructing assistants, keeping informed of significant problems encountered, and reviewing the work performed. AU § 311.11-.13.

14. After reengaging as Yuhe's auditor for the 2009 audit, CVB and Anderson did not perform their own audit of Yuhe. Instead, CVB and Anderson sought and obtained the audit work papers of the Acquiring Firm from its incomplete fieldwork for the short period it was Yuhe's auditor. Between approximately March 9 and March 30, 2010, CVB's acting audit manager for the 2009 Yuhe audit, a senior associate at CVB who was not a CPA, collected and reviewed the incomplete audit work papers of the Acquiring Firm. The acting audit manager did not request that any additional audit procedures be performed, and did not provide review notes for additional clarification or documentation to be added to the substantive audit procedures. In fact, no additional meaningful substantive audit procedures were performed for the Yuhe audit by CVB or Anderson or anyone acting at their direction.

15. As a result of not performing their own audit of Yuhe, neither CVB nor Anderson participated in the planning, execution, or supervision of any audit procedures performed for Yuhe's 2009 audit. Neither CVB nor Anderson formulated a specific audit plan for Yuhe's 2009 audit, or conducted formal audit planning meetings. Moreover, neither CVB nor Anderson made sufficient inquiry into Yuhe's business, recent developments, accounting policies and procedures, or control risk. Additionally, CVB and Anderson did not provide direction or guidance to the accounting staff in China who performed the audit field work.

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[5] References to auditing standards in this Order are to PCAOB Standards in effect at the time the audit work was performed.

16. The auditor should consider audit risk and materiality both in (a) planning the audit and designing auditing procedures and (b) evaluating whether the financial statements taken as a whole are presented fairly, in all material respects, in conformity with generally accepted accounting principles. The auditor should consider audit risk and materiality in the first circumstance to obtain sufficient competent evidential matter on which to properly evaluate the financial statements in the second circumstance. AU § 312.12.

17. As a result of not performing their own audit of Yuhe, neither CVB nor Anderson participated in assessing audit risk or materiality for Yuhe's 2009 audit. CVB and Anderson simply accepted the assessment of materiality that the Acquiring Firm had documented without any consideration of how the amounts were established or if those amounts were appropriate. As part of the work that CVB and Anderson had done for the quarterly reviews, there was no planning or assessments documented that correspond to the procedures that were ultimately performed.

18. The audit approach used by the Acquiring Firm for Yuhe's 2009 audit differed significantly from that of CVB and Anderson's audit approach in the 2008 audit of Yuhe. For the 2009 audit, the Acquiring Firm's audit approach contemplated an intended reliance on Yuhe's internal controls which, if effective, would have allowed the Acquiring Firm to reduce its substantive testing. However, for the 2008 audit, CVB and Anderson had assessed Yuhe's internal control over financial reporting as weak to the point of planning to obtain no audit comfort from testing them. Further, the testimony of Anderson shows that he and CVB continued to place no reliance on controls for the 2009 audit. When CVB re-engaged as Yuhe's auditor, CVB and Anderson failed to adjust the audit approach used by the Acquiring Firm, or explain in their work papers why reliance on Yuhe's internal controls was appropriate.

19. Auditing standards require an auditor to plan and perform an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. AU § 316.01. Among other things, members of the audit team should discuss the potential for material misstatement due to fraud.. Discussions should include an exchange of ideas or "brainstorming" among the audit team members, including the auditor with final responsibility for the audit, about how and where they believe the entity's financial statements might be susceptible to material misstatement due to fraud, how management could perpetrate and conceal fraudulent financial reporting, and how assets of the entity could be misappropriated. AU § 316.14. Auditing standards require an auditor to make inquiries of management and others within the entity to obtain their views about the risks of fraud and how they are addressed. AU §316.14-.27.

20. By not planning or performing the 2009 audit of Yuhe, CVB and Anderson did not seek to obtain reasonable assurance that Yuhe's financial statements were free of material misstatement, whether by error or fraud. CVB and Anderson did not consider the risks of material misstatement due to fraud at Yuhe, did not meet to discuss the susceptibility of Yuhe's financial statements to material misstatement due to fraud, and did not inquire of Yuhe management or its employees about fraud in connection with CVB and Anderson's issuance of its 2009 audit report.

21. AU § 317 notes that audit procedures applied for the purpose of forming an opinion on the financial statements may bring possible illegal acts to the auditor's attention. Examples of these procedures include reading minutes; inquiring of the client's management and legal counsel concerning litigation, claims, and assessments; and performing substantive tests of details of transactions or balances. Auditing standards require an auditor to make inquiries of management concerning the client's compliance with laws and regulations, including, where applicable, the client's policies relative to the prevention of illegal acts. AU § 317.08.

22. There is no documentary evidence suggesting any inquiries by CVB or Anderson of Yuhe's management concerning Yuhe's policies related to the prevention of illegal acts and compliance with laws and regulations. Here, such inquiries would have been appropriate, given (i) the resignation of the prior auditor; (ii) the continued existence of prohibited loans; (iii) the number and type of audit adjustments included in the Acquiring Firm's incomplete audit work papers that CVB obtained, which indicated a lack of knowledge within Yuhe of financial reporting practices common to the United States; (iv) the weak or non-existent control environment; and (v) the use of personal bank accounts for Yuhe payments, which would have indicated higher risk and potentially triggered additional procedures and inquiries.

23. Auditing standards also require an auditor to consider the risks surrounding related party transactions. AU § 334. An auditor should obtain an understanding of management responsibilities, the relationship of each component to the total entity, the business purpose served by the various components of the entity, and the controls over management activities. AU § 334.05. After identifying related party transactions, the auditor should apply the procedures he considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. The procedures should be directed toward obtaining and evaluating sufficient competent evidential matter and should extend beyond inquiry of management. AU § 334.09.

24. CVB and Anderson did not consider the risks surrounding related party transactions during the 2009 Yuhe audit. Instead, CVB and Anderson relied upon work performed and assessments made by the Acquiring Firm whose work papers were incomplete. CVB and Anderson did not inquire of management independently as part of their audit, nor did they hold any discussions with the Audit Committee concerning related party transactions.

25. Under auditing standards, the observation of inventories is mandated as a generally accepted auditing procedure. AU § 331.01. CVB and Anderson did not perform an inventory observation during the 2009 audit of Yuhe. An inventory observation was done by the Acquiring Firm. Moreover, when the Acquiring Firm performed the observation, it only performed limited counts because it placed some reliance on Yuhe's internal controls relating to inventory.

26. Auditing standards require auditors to exercise due professional care throughout the audit. AU § 230. Due professional care requires that the auditor exercise professional skepticism, which means a questioning mind and a critical assessment of audit evidence. Moreover, gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence. Since evidence is gathered and evaluated throughout the audit,

professional skepticism should be exercised throughout the audit process. By failing to adhere to the auditing standards set forth above, CVB and Anderson failed to exercise due professional care during the 2009 Yuhe audit.

27. Van Wagoner, as engagement quality review partner, also failed to exercise due professional care in Yuhe's 2009 audit. Van Wagoner had responsibility for reviewing the audit work for the 2009 audit. He was aware that CVB and Anderson had not planned, conducted, or supervised an audit of Yuhe and had instead taken, and were relying upon, the work papers of a different audit firm. Despite having this knowledge, Van Wagoner concurred in CVB's issuance of an audit report containing an unqualified opinion on Yuhe's financial statements for fiscal year 2009.

28. Under the third standard of field work, sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01. CVB and Anderson did not contribute or provide supervision in the inspection, observation, inquiry, or confirmation processes of the 2009 audit of Yuhe—all of which were done by the Acquiring Firm.

29. Audit documentation is the written record of the basis for the auditor's conclusions that provides the support for the auditor's representations in the auditor's report. Audit documentation also is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor. AS 3, ¶ 2.

30. CVB and Anderson failed to properly document the 2009 audit. They failed to document how they accepted and utilized the work of another firm, how they were able to supervise assistants performing audit procedures before CVB was engaged on the audit, how they obtained evidence, and how they reached conclusions.

31. Obtaining representations from management is required for audits performed in accordance with PCAOB Standards, as outlined in AU § 333. While such representations are part of the evidence obtained by an independent auditor, they cannot substitute for the application of the auditing procedures needed to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 333.02. In the 2009 audit of Yuhe, CVB and Anderson obtained written representations without applying auditing procedures which would have been necessary to form a basis for their opinion.

CVB and Anderson's 2010 Audit of Yuhe

32. Yuhe engaged CVB to conduct an audit of its 2010 financial statements. CVB and Anderson documented that Yuhe presented a significant risk of material misstatement because Yuhe lacked the ability to perform the proper procedures necessary to produce reliable financial statements, and Yuhe personnel lacked the experience and ability to create financial statements in

accordance with US GAAP, understand Yuhe's transactions, and account for them properly. Accordingly, citing a weak controls environment, CVB and Anderson planned their audit assuming no controls reliance.

33. For the 2010 audit, CVB *increased* the planning materiality threshold to over 230% of the prior year's number, even though CVB and Anderson continued to believe that they could not rely on Yuhe's internal controls and there was not a proportionate increase in net income. Additionally, CVB and Anderson did not document their rationale for increasing materiality in 2010.

34. Despite assessing a weak controls environment, CVB and Anderson's approach to the audit consisted mostly of a perfunctory completion of checklists and certain substantive testing procedures, along with a review of those checklists by CVB and Anderson and did not include a proper consideration of risk and materiality.

35. For the 2010 Yuhe audit, CVB and Anderson contracted with personnel in China to perform fieldwork on CVB's behalf. However, CVB and Anderson did not play a substantive role in audit supervision and, instead, sent checklists to the Foreign Audit Staff to use without specific instructions, detailed work plans, or appropriate modifications based on identified risks. CVB and Anderson failed to provide the Foreign Audit Staff specific guidance on the procedures to be performed, the audit objectives to be accomplished, or the need to maintain proper audit documentation in accordance with AU § 311 and AS 3.

36. CVB's audit manager gave the work papers created by the Foreign Audit Staff only a cursory review with no follow up or substantive dialogue as to their content or findings. Neither CVB nor Anderson questioned the substantive work performed by the Foreign Audit Staff or provided any review comments or requests for additional procedures. CVB and Anderson failed to comply with the provisions of AU § 311 as outlined in paragraph 13.

37. Whenever the auditor has concluded that there is significant risk of material misstatement of the financial statements, the auditor should consider this conclusion in determining the nature, timing, or extent of procedures; assigning staff; or requiring appropriate levels of supervision. The knowledge, skill, and ability of personnel assigned significant engagement responsibilities should be commensurate with the auditor's assessment of the level of risk for the engagement. Ordinarily, higher risk requires more experienced personnel or more extensive supervision by the auditor with final responsibility for the engagement during both the planning and the conduct of the engagement. Higher risk may cause the auditor to expand the extent of procedures applied, apply procedures closer to or as of year end, particularly in critical audit areas, or modify the nature of procedures to obtain more persuasive evidence. AU § 312.17.

38. CVB and Anderson documented during the fraud risk discussion concerns about the risk of material misstatement due to Yuhe's inability to perform proper procedures necessary to produce reliable financial statements. Despite CVB and Anderson having assessed Yuhe's internal controls as ineffective and its personnel as lacking in experience to produce US GAAP

financial statements, CVB and Anderson failed to properly consider the risk of material misstatement and design appropriate audit procedures to address the identified risks.

39. CVB and Anderson failed to properly consider the possibility of fraud or modify and extend the audit procedures based on such considerations in 2010. CVB and Anderson also identified as a risk the use of personal bank accounts to transact company business and the risk of personal funds being intermingled with business funds. To address the risk identified, CVB and Anderson assigned two Hong Kong based individuals on the Foreign Audit Staff to perform procedures to address these risks. However, neither CVB nor Anderson supervised or reviewed the procedures carried out by these two individuals. AU § 312.17 states that higher risk requires more experienced personnel or more extensive supervision by the auditor with final responsibility for the engagement during both the planning and the conduct of the engagement. AU § 316.01 requires an auditor to plan and perform an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. By not properly addressing the risks that were identified, or supervising the staff assigned to the task, CVB and Anderson failed to properly consider and address the risk associated with fraud on the financial statements.

40. Even though CVB and Anderson assessed Yuhe's internal controls as ineffective and its personnel as lacking in experience to produce US GAAP financial statements, CVB and Anderson relied on discussions with management by the Foreign Audit Staff and on evidence supplied by management throughout their audit as their sole basis for audit evidence in certain areas. CVB and Anderson's overreliance on management's representations, especially in light of their assessment of management's abilities, was inappropriate. While such representations from management are part of the evidential matter the independent auditor obtains, they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 333.02.

41. In late March 2011, CVB and Anderson completed Yuhe's 2010 audit and issued an audit report containing an unqualified opinion on Yuhe's financial statements for fiscal year 2010.

42. Under the auditing standard governing engagement quality review which was effective for Yuhe's 2010 audit, the engagement quality reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report. AS 7, ¶ 9. The engagement quality reviewer should evaluate the significant judgments that relate to engagement planning, including the consideration of the auditing firm's recent engagement experience with the company and risks identified in connection with the firm's client acceptance and retention process, the consideration of the company's business, recent significant activities, and related financial reporting issues and risks, and the judgments made about materiality and the effect of those judgments on the engagement strategy. AS 7, ¶ 10. To evaluate such judgments and conclusions, the engagement quality reviewer should, to the extent necessary to satisfy the requirements, hold discussions with the engagement partner and other members of the engagement team and review documentation. AS 7, ¶ 9. In an audit, the firm may grant permission to the client to use the

engagement report only after the engagement quality reviewer provides concurring approval of issuance. AS 7, ¶ 13.

43. Van Wagoner failed to fulfill the requirements of AS 7 for Yuhe's 2010 audit. Specifically, the work papers do not evidence any communications between the audit team and Van Wagoner throughout the year or during the audit process. The emails among team members show that the vast majority of Van Wagoner's communications appear perfunctory and lacking in substantive information or commentary. There is no evidence that he reviewed or evaluated the audit planning process, the assessment of materiality, or the consideration and assessment of fraud risks in a manner that would fulfill professional responsibilities.

Yuhe's Public Offering and Fraud

44. On June 2, 2010, Yuhe filed its Form S-3 Registration Statement and Prospectus with the Commission, which became effective on June 23, 2010. On October 19, 2010, Yuhe filed its Preliminary Prospectus Supplement, and, on October 20, 2010, it filed its Final Prospectus Supplement. CVB's audit report containing an unqualified opinion for 2009 was included in those filings, as each incorporated Yuhe's 2009 Form 10-K. From October 20, 2010 to November 2, 2010, Yuhe conducted a public offering, selling 4.14 million newly issued shares of common stock at a price of $7.00 per share, and receiving net proceeds in excess of $27 million.

45. On December 31, 2009, and January 4, 2010, Yuhe filed Forms 8-K announcing that on December 24, 2009, it had entered into an agreement with Waifang Dajiang Corporation to purchase thirteen breeder farms for an aggregate price of approximately $15.2 million. Prior to the acquisition, Yuhe owned only fourteen breeder farms, which meant the acquisition would increase Yuhe's capacity by 60%. From January 2010 through June 2011, in press releases and filings with the Commission, Yuhe provided numerous updates concerning the status of the acquired farms. However, on June 17, 2011, Yuhe hosted a conference call during which Yuhe disclosed for the first time that the acquisition had never been completed and that the funds had, instead, been placed in a private account controlled by the CEO. On the same day shortly after the conference call, CVB resigned as Yuhe's independent auditor, stating that reliance should no longer be placed on its previously issued audit report for 2010.

VIOLATIONS

Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice

46. As a result of the conduct described above, Respondents engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Section 4C(b) and Rule 102(e)(1)(iv) define improper professional conduct with respect to persons licensed to practice as accountants.

47. Under Section 4C(b) and Rule 102(e)(1)(iv)(B), the term "improper professional conduct" means one of two types of negligent conduct: (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.

48. Respondents' failures to abide by PCAOB Standards during the 2009 and 2010 Yuhe audits constitute repeated instances of unreasonable conduct. Additionally, the actions of CVB and Anderson during the 2009 Yuhe audit constitute a single instance of highly unreasonable conduct in circumstances in which heightened scrutiny was warranted. As a result, the Respondents have demonstrated a lack of competence to practice before the Commission.

49. As a result of the conduct described above, CVB willfully violated and Anderson willfully aided and abetted CVB's violations of Section 10A(a)(1) and (2) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice. Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

CVB Violated and Anderson Aided, Abetted, and Caused CVB's Violations of Section 10A(a)(1) and (2) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X

50. Under Section 21C of the Exchange Act, the Commission may enter a cease and desist order against any person who commits a violation or is or was a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C of the Exchange Act when a person is alleged to have caused a primary violation that does not require scienter. *See KPMG LLP v. SEC*, 289 F.3d 109, 112 (D.C. Cir. 2002).

51. Sections 10A(a)(1) and (2) of the Exchange Act require that each audit of the financial statements of an issuer by a registered public accounting firm must include, in accordance with generally accepted auditing standards ("GAAS"), procedures designed to detect illegal acts and identify related party transactions that are material to the financial statements. "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." *See* SEC Release No. 34-49708 (May 14, 2004).

52. As a result of the conduct described above, CVB violated Sections 10A(a)(1) and (2) of the Exchange Act by not designing procedures to detect illegal acts and identify related party transactions that were material to the financial statements, and Anderson aided, abetted, and/or caused CVB's violations of Sections 10A(a)(1) and (2) of the Exchange Act.

53. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state whether the audit was made in accordance with generally accepted auditing standards. "Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB Standards when it had not." *See In re Andrew Sims*, CPA, Rel. No.34-59584, AAER No. 2950 (Mar. 17, 2009).

54. As a result of the conduct described above, CVB violated Rule 2-02(b)(1) of Regulation S-X by issuing an audit report stating that it had conducted its audit in accordance with PCAOB Standards when it had not, and Anderson aided, abetted, and/or caused CVB's violation of, Rule 2-02(b)(1) of Regulation S-X.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate against Respondents CVB, Anderson, and Van Wagoner pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice;

C. What, if any, remedial action is appropriate against Respondents CVB and Anderson pursuant to Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice;

D. Whether, pursuant to Section 21C of the Exchange Act, Respondents CVB and Anderson should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 10A(a)(1) and (2) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X.

E. Whether Respondents CVB and Anderson should be ordered to pay disgorgement, plus prejudgment interest, and civil penalties pursuant to Sections 21B and 21C of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Gallagher-
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9611 / July 8, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72562 / July 8, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3873 / July 8, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31151 / July 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15967

In the Matter of

LAWRENCE M. LABINE,

Respondent.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 against Lawrence M. LaBine ("Respondent" or "LaBine").

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENT

1. LaBine, age 53, is a resident of Fountain Hills, Arizona. From 2007 through 2010, LaBine was an investment adviser representative and registered representative associated with DeWaay Advisory, LLC and DeWaay Financial Network, Inc., an investment advisory firm and brokerage firm headquartered in Clive, Iowa. He was terminated from both DeWaay entities in 2010. In 2007, the State of Illinois fined LaBine $1,250 and entered a consent order of withdrawal of his state registration as a salesperson with no application for re-registration for eighteen months. In 2005, the NASD suspended LaBine from association with any NASD member in any capacity for 15 business days, fined him $25,000, and required him to requalify by examination as a general securities representative, for making and effectuating unsuitable recommendations to five customers. Currently, LaBine is a registered representative and investment adviser representative with a firm headquartered in Fort Lauderdale, FL.

FACTS

2. From in or around July 2008 through August 2009, LaBine recommended and sold to more than 100 of his advisory and brokerage clients ("Clients") an alternative investment in a class of debt securities issued by a start-up company named Domin-8 Enterprise Solutions, Inc. ("Domin-8 or the "Company"). In recommending and selling this investment to his Clients, LaBine failed to disclose that his expected compensation for those sales included warrants to purchase shares in the Company.

3. From at least February 2009 through August 2009, LaBine also failed to disclose to his Clients that he was the principal fundraiser for Domin-8 and the Company was depending almost exclusively on LaBine to raise operating capital on its behalf.

4. LaBine knew that if he alone did not raise sufficient funds from his Clients, the Company would be forced into bankruptcy. LaBine did not disclose to his Clients that his ability to sell the Series D debentures to them was the only thing keeping the Company afloat, and out of bankruptcy, and that he was incentivized by increased warrant compensation to aggressively sell the debentures to his Clients. LaBine also misrepresented to his Clients their risk of loss on their Domin-8 investments.

Background

5. Domin-8 was formed in 2002 as a start-up enterprise software application company that provided software solutions and related services to the property management industry in the United States and Canada. The Company's primary customers were multi-family residential property owners and managers, and managers of leased commercial and retail real estate.

6. From late 2005 through mid-2007, under the leadership of its founder and then-CEO, Domin-8 embarked on an aggressive acquisition strategy, purchasing eight

software companies. Net losses for the Company in 2006 and 2007 were $11.2 million and $14.5 million, respectively.

7. In 2007, Domin-8 began a series of debt offerings to pay off amounts due to the sellers of the acquired companies ("Seller Notes") and to help fund Domin-8's operations. The first three of these offerings –the Series A, Series B, and Series C debentures -- raised a total of $18.7 million.

8. In June 2008, Domin-8 began another round of debt financing. This offering consisted of Series D debentures. The Series D debentures carried a 10 percent interest rate at the outset. The Company hoped to raise at least $12 million from the Series D offering. The Company had a net loss in 2008 of approximately $16.6 million, attributable in part to its increasing debt burden and restructuring from the acquisitions.

LaBine Sold Domin-8 Series D Debentures to His Clients But Failed to Fully Disclose His Compensation for Those Sales

9. During the debenture sales period, LaBine was a dually registered investment adviser representative and broker dealer representative. Approximately 80 percent of the Clients to whom he recommended and sold the Series D debentures had both fee-based advisory accounts and commission-based brokerage accounts with him. As to those Clients, LaBine had existing advisory relationships with them and made no attempt to step outside of his role as a fiduciary or delineate the capacity in which he sold them the Series D debentures. LaBine provided investment advice to those Clients with regard to both their advisory and brokerage accounts and made no distinction between advisory and brokerage services. Approximately 20 percent of LaBine's Clients who purchased the Domin-8 debentures had only commission-based brokerage accounts. For all of LaBine's purchasing Clients, the debentures were purchased in private placement transactions directly with the Company and the Domin-8 certificates were held in the Clients' commission-based brokerage accounts.

10. In June or July 2008, LaBine began recommending to his Clients that they purchase Domin-8's Series D debentures. The Series D debentures were offered via a private placement memorandum ("PPM") dated June 30, 2008. The PPM was amended and restated in June 2009, and was supplemented at least eight times over the course of the Series D offering, which extended to at least August 2009.

11. The PPM listed GunnAllen Financial, Inc. ("GAF"), an investment banking and brokerage firm, as the Placement Agent for the offering, and disclosed that the Placement Agent was entitled to receive commissions for sales of the debentures, as well as warrants to purchase shares of Domin-8. The PPM defined the Placement Agent as GAF.

12. For the Series D offering, GAF and DeWaay Financial Network, Inc. ("DeWaay"), the brokerage firm with which LaBine was then associated, entered into a selling agreement under which DeWaay was to receive 80 percent of payable commissions and warrants and GAF the remaining 20 percent. That selling agreement was not disclosed

in the PPM or any other offering documents. DeWaay was not listed in the PPM or any other offering documents as a Placement Agent for the Series D offering. LaBine was not listed in the PPM or any other offering documents as a Placement Agent for the Series D offering.

13. LaBine's Clients received subscription documents and executed subscription agreements issued by Domin-8 to effectuate their purchases of the Series D debentures. The subscription documents did not disclose any information about LaBine's compensation for the transaction. In addition, the Clients signed DeWaay disclosure forms in connection with their Series D purchases. These disclosure forms did not disclose that LaBine expected to receive warrants to purchase shares of Domin-8 as part of his compensation for selling the debentures. LaBine also did not inform his Clients verbally that he expected to receive such warrants.

14. The warrant compensation was important to LaBine. In November 2008, he sought an increase in his share of warrants from DeWaay before raising more money for Domin-8. Later in 2009, when he was essentially the sole fundraiser for Domin-8, LaBine received confirmation from the Placement Agent that his warrant price would be reduced, making his warrant compensation more valuable.

15. LaBine did not tell his Clients that he expected to receive warrants as additional compensation for selling the securities, and as incentive to recommend and sell the securities to his Clients. He knew or should have known that his warrant compensation was also not disclosed in any of the offering documents or other documents that his Clients received concerning their Domin-8 investment. The information concerning LaBine's expectation of receiving warrants in Domin-8 was material to his Clients and represented an undisclosed conflict of interest.

LaBine Failed to Disclose His Role as Primary Fundraiser for Domin-8

16. Domin-8 could not service its existing debt or fund operations unless it raised the full $12 million authorized in the Series D debenture offering. By January 2009, however, Domin-8 had not raised the desired $12 million and was becoming increasingly desperate for additional capital. After an on-site visit with Domin-8's senior management in late January 2009, LaBine knew that Domin-8 needed to raise money to meet its operating expenses and stave off bankruptcy, and he committed to raise $500,000 by the end of that month for the Company.

17. In or around February 2009, LaBine agreed to raise $1 million per month for Domin-8 to complete the Series D offering and keep the Company afloat. From February 2009 through August 2009, LaBine aggressively recommended and sold the Domin-8 Series D debentures to his Clients. He did not disclose to his Clients the material information that his sales efforts, including his ability to successfully close sales of the Series D debentures to those clients, were critical to the company's solvency. He also did not disclose that he had a financial and potential ownership interest in Domin-8 via the warrants.

18. During this sales period, LaBine received direct information about the Company's waning prospects from the Company's Chief Financial Officer and from GAF, the Placement Agent for the Series D offering. LaBine knew from these discussions that Domin-8 could not make payroll or pay its current obligations without his sales efforts, and that Domin-8's management was depending on his personal sales efforts to continue operating and to avoid bankruptcy. LaBine did not disclose this material information to his Clients.

19. In April 2009, in a discussion with LaBine concerning the importance of LaBine's sales efforts to the Company, the Placement Agent informed LaBine that his warrant price would be reduced, making LaBine's warrant compensation more valuable. LaBine continued to recommend and sell the Series D debentures to his Clients without disclosing to them his crucial role in fundraising for the Company, or the fact that he was incentivized to sell the debentures by the promise of more valuable warrants to purchase shares in the Company.

20. LaBine knew or should have known that his Clients would have regarded it as material that, but for his ability to sell to them the Series D debentures, the Company would not survive, and that he was incentivized to aggressively sell his Clients the debentures. Because he did not disclose this material information, LaBine's Clients were deprived of the ability to assess whether the undisclosed information affected LaBine's independence and trustworthiness.

21. While some of the PPM supplements disclosed that the Company needed funds from the offering in order to operate, execute its business strategy, or conduct planned business activities, LaBine did not disclose to his Clients the material information that his own sales efforts, including his ability to successfully close sales of the Series D debentures to those Clients, were critical to the Company's solvency. LaBine failed to disclose that he was essentially the only investment professional successfully advising and recommending to his Clients that they purchase debentures in the Series D offering.

22. As their investment adviser, LaBine owed his Clients a fiduciary duty to act in their best interests, which includes an obligation not to subordinate his Clients' interests to his own and an obligation to eliminate or fully disclose all material conflicts of interest, including any economic self-interest. As their broker recommending the purchase of Domin-8 debentures, LaBine was required to deal fairly with his Clients by, among other things, disclosing all material information about the investment, including material conflicts of interest. Based on the conduct described above, LaBine failed his Clients in his duties as both an investment adviser and a broker.

LaBine Misrepresented the Risk of Loss to his Clients

23. From at least February 2009, LaBine falsely represented to his Clients that the illiquid Domin-8 debentures were essentially risk-free, in contradiction to the risk

disclosures in the PPM and supplements. LaBine told Clients that the investment was safe, secured, and they would not lose any of the money they invested in Domin-8.

24. In July 2009, for example, LaBine had several meetings with an elderly couple who were new Clients of his. To persuade them to invest in the Series D debentures, LaBine told them the Series D investment was safe and that they would get all of their investment back if something went wrong. This couple was one of the last Clients LaBine put into the Domin-8 investment, when he knew the company was depending on his sales efforts to stave off bankruptcy. The couple told LaBine they were fearful about investing in Series D and possibly losing money recently inherited from a parent. Their decision to invest in Series D rested on LaBine's false assurance to them in their meetings that they would get their money back even in bankruptcy.

25. LaBine regularly told his Clients that the Series D investment was safe and he presented the possibility of bankruptcy as a positive development, touting it as the best thing that could happen because his Clients could end up owning the company. While the company's written disclosures indicated that the company may need to seek bankruptcy protection, LaBine's oral representations regarding the alleged safety of the Domin-8 investment, even in the event of bankruptcy, were false and misleading, and LaBine knew or should have known that he had no basis to guarantee the safety of his Clients' investment in the highly speculative Domin-8 debentures. In fact, his Clients lost a third of their investment in the bankruptcy and did not end up owning the company.

26. Domin-8 ultimately did not succeed in raising the money needed to service its debt and fund its operations. LaBine stopped raising money for Domin-8 when he had nearly exhausted his list of Clients who were willing to invest, and after Domin-8's CFO had suggested to LaBine that he could organize a bid to purchase Domin-8's assets in a bankruptcy proceeding. Domin-8 filed a Chapter 11 bankruptcy petition on September 17, 2009, after Domin-8's CFO informed its Board of Directors that LaBine would stop selling Series D debentures. Domin-8's bankruptcy filing occurred only a few weeks after LaBine had closed his final sale of the Series D debentures. LaBine then formed an entity to purchase Domin-8's assets in the bankruptcy proceeding and convinced his Clients to exchange their Domin-8 debentures for debt and shares in the newly-formed entity. Had his bid been accepted by the bankruptcy court, LaBine stood to gain a substantial ownership interest in Domin-8. But the court rejected his bid because, among other things, it found that a competitor's bid provided greater recovery to the Series D debenture holders – LaBine's own clients – than LaBine's bid provided. The bankruptcy court also found that LaBine's bid unfairly benefited some creditors over others with equal priority.

27. The Clients to whom LaBine had recommended and sold the Series D debentures lost substantially on the bankruptcy filing. For his part, LaBine earned over $500,000 in sales commissions, notwithstanding the rejection of his bankruptcy bid.

VIOLATIONS

28. As a result of the conduct described above, LaBine willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, which make it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or prospective client; or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

29. As a result of the conduct described above, LaBine willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act of 1940;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and Section 206(2) of the Advisers Act; and whether Respondent should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B of the Exchange Act, and Section 203(i) of the Advisers Act; and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Section 203(j) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9610 / July 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15966

In the Matter of **Kings Canyon Joint Unified School District** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Kings Canyon Joint Unified School District ("Issuer" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Issuer consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. Between December 2006 and December 2007, in accordance with Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule 15c2-12"),[2] the Issuer contractually undertook to annually disclose certain financial information, operating data, and event notices in three municipal bond offerings, totaling over $30 million. Between at least 2008 and 2010, however, the Issuer failed to comply with its contractual undertakings by failing to submit some of the required disclosures. Despite this failure to fully comply with its prior undertakings, in November 2010 the Issuer, in a fourth, $6.8 million municipal bond offering, affirmatively stated in public bond offering documents that it had not failed, in the previous five years, to comply in all material respects with any prior disclosure undertakings. This was an untrue statement of a material fact.

2. As a result of the conduct described above, the Issuer violated Section 17(a)(2) of the Securities Act in the November 2010 bond offering.

Respondent

3. Kings Canyon Joint Unified School District serves students in the California Counties of Fresno and Tulare. It employs approximately 1000 full and part-time staff at 19 school campuses. Its current enrollment is approximately 10,000 students. An elected, seven-member Board of Trustees governs the Issuer.

The Issuer's Continuing Disclosure Undertakings

4. In December 2006 the Issuer publicly offered $19 million of municipal bonds, in November 2007 the Issuer publicly offered $4.5 million of municipal bonds, and in December 2007

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Rule 15c2-12 prohibits, among other things and subject to certain exemptions, any underwriter from purchasing or selling municipal securities unless it has reasonably determined that the issuer of municipal securities, or an obligated person, has undertaken in a written agreement or contract, sometimes referred to as a Continuing Disclosure Certificate, to provide annual financial information and notices of certain material events ("Event Notices") to certain information repositories. An "obligated person" generally means any person or entity that is committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities being offered. Additionally, Rule 15c2-12(f)(3) defines what information must be included in a final Official Statement. Among other things, this definition requires a description of the issuer's or obligated person's disclosure undertakings, as well as a description of any instances in the previous five years in which an issuer or obligated person failed to comply in all material respects with any previous disclosure undertakings.

the Issuer publicly offered $6.7 million of certificates of participation (collectively, the "Municipal Offerings").

5. Pursuant to Rule 15c2-12, the Issuer executed contractual agreements to make disclosures ("Continuing Disclosure Certificates") in the Municipal Offerings. As part of the Continuing Disclosure Certificates, the Issuer covenanted and agreed to, among other things, submit annual reports containing certain financial information and operating data to the appropriate national and state repositories, as well as timely notices of certain specified events pertaining to the municipal securities at issue.[3] Further, the Issuer contracted to submit notices in the event it was unable to provide the contractually required annual reports.

6. The Issuer received and reviewed various drafts of both the preliminary, and what ultimately became the final Official Statements for the Municipal Offerings. As required by Rule 15c2-12, the final Official Statements included summary descriptions of the provisions of the respective Continuing Disclosure Certificates. The Issuer authorized and approved the Official Statements, which were then disseminated to the public in the offer and sale of the municipal securities.

The Issuer Failed to Fully Comply with its Contractual Continuing Disclosure Obligations

7. Between at least 2008 and 2010, the Issuer failed to submit some of the disclosures required under the contractual terms of its Continuing Disclosure Certificates.

The Issuer's 2010 Municipal Bond Offering

8. In November 2010 the Issuer publicly offered $6.8 million of municipal bonds ("2010 Offering").

9. The Issuer again received and reviewed various drafts of both the preliminary, and what ultimately became the final, Official Statement for the 2010 Offering. The Official Statement for the 2010 Offering included a section titled "Continuing Disclosure" which read in part: "[t]he District has had no instance in the previous five years in which it failed to comply in all material respects with any previous continuing disclosure obligation under [Rule 15c2-12]." The Issuer reviewed, authorized and approved the Official Statement for the 2010 Offering, which was then disseminated to the public.

[3] In December 2008, Rule 15c2-12 was amended to designate the Electronic Municipal Market Access system ("EMMA") as the central repository for ongoing disclosures by municipal issuers effective July 1, 2009.

10. The statement regarding compliance with prior continuing disclosure obligations contained in the "Continuing Disclosure" section of the Official Statement for the 2010 Offering was an untrue statement of a material fact. The Issuer should have known that this statement was untrue.

Legal Discussion

11. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." The prohibitions of Section 17(a)(2) apply to the offer or sale of municipal securities. In order to establish a cause of action under Section 17(a)(2), the Commission must establish that: (1) the misrepresentations or omissions were material; and (2) the misrepresentations or omissions were in the offer or sale of securities. Aaron v. SEC, 446 U.S. 680 (1980). No finding of scienter is required to establish a violation of Section 17(a)(2); negligence is sufficient. *Id.* at 696-97. There is a substantial likelihood that a reasonable investor determining whether to purchase the Issuer's municipal securities would attach importance to the Issuer's failure to comply with its prior continuing disclosure undertakings.

12. Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. Disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities.[4] Therefore, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer undertakes (among other things) to annually submit certain financial information. Failure to provide such annual financial information is the type of information required to be disclosed to a customer by a broker-dealer and is a significant factor to be taken into account by a dealer in determining whether or not to recommend a security.[5]

13. In addition, it is important for investors and the market to know the scope of any ongoing disclosure undertakings, and the type of information to be provided. Rule 15c2-12 therefore requires that the undertakings provided pursuant to Rule 15c2-12 be described in the final Official Statement. This allows investors to ascertain whether the undertakings have been satisfied.[6]

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[4] *See* Securities Exchange Act Release No. 34-33741 (March 9, 1994), 59 FR 12748 (March 17, 1994), at 12752.

[5] *See* Securities Exchange Act Release No. 34-34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) ("1994 Adopting Release"), at 59602-3.

[6] *See id.* at 59594.

14. Moreover, critical to any evaluation of an undertaking to make disclosures, is the likelihood that the issuer or obligated person will abide by the undertaking.[7] Therefore, Rule 15c2-12 requires disclosure in the final Official Statement of all instances in the previous five years in which any person providing an undertaking failed to comply in all material respects with any previous undertakings. This provides an incentive for issuers, or obligated persons, to comply with their undertakings, allowing underwriters, investors and others to assess the reliability of the disclosure representations.[8]

15. As a result of the conduct described above, the Issuer violated Section 17(a)(2) of the Securities Act in the 2010 Offering.

Undertakings

The Issuer has undertaken to:

16. Within one hundred eighty (180) days of the entry of this Order, establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations pursuant to Rule 15c2-12 to ensure compliance with the federal securities laws, including the designation of an individual or officer at the Issuer responsible for ensuring compliance by the Issuer with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

17. Within one hundred eighty (180) days of the entry of this Order, comply with existing continuing disclosure undertakings, including updating past delinquent filings if the Issuer is not currently in compliance with its continuing disclosure obligations.

18. Cooperate with any subsequent investigation by the Division of Enforcement regarding the false statement(s), including the roles of individuals and/or other parties involved.

19. Disclose in a clear and conspicuous fashion the terms of this settlement in any final official statement for an offering by the Issuer within five years of the entry of this Order.

20. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and the Issuer agrees to provide such evidence. The certification and supporting material shall be submitted to Cary S. Robnett, Assistant Director, Municipal Securities and Public Pensions Unit, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office,

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[7] *See id.*

[8] *See* 1994 Adopting release, 59 FR 59590, at 59595.

44 Montgomery Street, Suite 2800, San Francisco, CA 94104 or to her successor in office, with a copy to the Office of Chief Counsel of the Enforcement Division, on the one year anniversary of the entry of this Order.

IV.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, the Issuer shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act

B. The Issuer shall comply with the "Undertakings" enumerated in Section III, paragraphs 16, 17, 19, and 20 above.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Commissioner Aguilar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72577 / July 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15968

In the Matter of CHERYL L. ROBINSON, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Cheryl L. Robinson ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, and except as otherwise provided herein in Section IV, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. Cheryl L. Robinson acted as a promoter who recruited investors for Malom Group AG and M.Y. Consultants, Inc. from approximately 2009 to 2011. She is not and has never been registered with the Commission in any capacity.

2. On July 1, 2014, a final judgment was entered by consent against Cheryl L. Robinson, permanently enjoining her from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Exchange Act Section 10(b) and Rule 10b-5 thereunder, Exchange Act Section 15(a), and aiding and abetting violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder, in the civil action entitled SEC v. Robinson, Civil Action No. 2:14-cv-1036, in the United States District Court for the District of Nevada.

3. The Commission's complaint alleged that Cheryl L. Robinson solicited investors through materially false and misleading statements in connection with an advance-fee high-yield investment scam perpetrated by Switzerland-based Malom Group AG ("Malom") and Las Vegas-based M.Y. Consultants, Inc. The complaint alleged that, in connection with the scheme, Cheryl L. Robinson made materially false and misleading statements to investors about, among other things, Malom's background, its financial resources, and history of success. She also failed to inform investors that none of her clients had received any profits from a transaction with Malom and that all had lost their entire investment. Finally, she omitted to tell any of the investors that she would be paid approximately 25% of the investors' advance fees regardless of whether a transaction produced profits. The complaint also alleged that Cheryl L. Robinson acted as an unregistered broker dealer and sold unregistered Malom securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Robinson's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Robinson be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72581 / July 10, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15969

In the Matter of **ErgoBilt, Inc.,** **FPB Bancorp, Inc.,** **Geos Communications, Inc.,** **Integra Bank Corporation,** **Latitude Solutions Inc.,** **Noram Capital Holdings, Inc.,** **Raptor Technology Group, Inc., and** **Subjex Corp.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. ErgoBilt, Inc. ("ERGB") (CIK No. 1023874) is a Texas corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ERGB is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1997. On February 21, 2003, ERGB filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Texas, which was closed on July 6, 2005. As of July 7, 2014, the common

[1]The short form of each issuer's name is also its stock symbol.

stock of ERGB was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. FPB Bancorp, Inc. ("FPBI") (CIK No. 1162245) is a dissolved Florida corporation located in Port St. Lucie, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FPBI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $4,524,000 for the prior three months. As of July 7, 2014, the common stock of FPBI was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Geos Communications, Inc. ("GCMI") (CIK No. 949371) is an inactive Washington corporation located in Southlake, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GCMI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $2,493,318 for the prior three months. As of July 7, 2014, the common stock of GCMI was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Integra Bank Corporation ("IBNKQ") (CIK No. 764241) is a dissolved Indiana corporation located in Evansville, Indiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IBNKQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $46,206,000 for the prior three months. On July 30, 2011, IBNKQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Indiana, which was still pending as of July 7, 2014. As of July 7, 2014, the common stock of IBNKQ was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Latitude Solutions, Inc. ("LATIQ") (CIK No. 1477961) is a defaulted Nevada corporation located in Fort Worth, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LATIQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of $4,847,518 for the prior three months. On November 9, 2012 filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Texas, which was converted to a Chapter 11 proceeding on April 5, 2013, and was still pending as of July 7, 2014. As of July 7, 2014, the common stock of LATIQ was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Noram Capital Holdings, Inc. ("NRMH") (CIK No. 45694) is a void Delaware corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NRMH is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2010, which reported a net loss of $194,435 for the prior six months. As of

July 7, 2014, the common stock of NRMH was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Raptor Technology Group, Inc. ("RAPT") (CIK No. 1420526) is a revoked Nevada corporation located in Groveland, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RAPT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2011, which reported a net loss of $1,261,878 for the prior nine months. As of July 7, 2014, the common stock of RAPT was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

8. Subjex Corp. ("SBJX") (CIK No. 1107699) is an inactive Minnesota corporation located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SBJX is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2011, which reported a net loss of $59,650 for the prior three months. As of July 7, 2014, the common stock of SBJX was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 10, 2014

In the Matter of ErgoBilt, Inc., FPB Bancorp, Inc., Geos Communications, Inc., Integra Bank Corporation, Latitude Solutions Inc., Noram Capital Holdings, Inc., Raptor Technology Group, Inc., and Subjex Corp. File No. 500-1	ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ErgoBilt, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FPB Bancorp, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geos Communications, Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integra Bank Corporation because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Latitude Solutions, Inc. because it has not filed any periodic reports since the period ended March 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Noram Capital Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Raptor Technology Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Subjex Corp. because it has not filed any periodic reports since the period ended March 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 10, 2014, through 11:59 p.m. EDT on July 23, 2014.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72599 / July 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-13847

In the Matter of MORGAN ASSET MANAGEMENT, INC., MORGAN KEEGAN & COMPANY, INC., JAMES C. KELSOE, JR., AND JOSEPH THOMPSON WELLER, CPA, Respondents.	ORDER DIRECTING DISBURSEMENT OF FAIR FUND

On April 3, 2013, the Securities and Exchange Commission ("Commission") published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") in connection with this proceeding pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 CFR 201.1103.[1] The Notice advised parties that they could obtain a copy of the proposed Plan of Distribution ("Plan") at www.sec.gov. The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, within 30 days of the date of the Notice. Six comments were received in response to the Notice. On

[1] Exchange Act Release No. 69288 (Apr. 3, 2013).

August 16, 2013, the Commission issued an Order Approving Modified Plan and Setting Fund Administrator Bond Amount.[2]

The Modified Plan provides for the distribution of $100,300,000 in disgorgement, prejudgment interest, and civil money penalties paid by the Respondents, plus any accumulated interest, less any Bureau of Public Debt fees and taxes on the interest earned, to investors according to the methodology set forth in the Modified Plan. In accordance with paragraph 53 of the Modified Plan, the Fund Administrator has submitted to the Commission staff a list of payees and payment amounts, together with a reasonable assurances letter representing that the list of payees: a) was compiled in accordance with the approved Modified Plan; b) is accurate as to Eligible Claimants' names, addresses, and amounts; and c) provides all information necessary to make payments to each Eligible Claimant whose Disbursement amount equals or exceeds the Minimum Distribution Amount. Commission staff has reviewed the payee list and requests that, pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans, the Commission authorize the transfer of $100,398,383.91 from the Morgan Asset Fair Fund to Huntington Bank for distribution in accordance with the Modified Plan.

Accordingly, it is ORDERED that the Commission staff shall transfer $100,398,383.91 from the Morgan Asset Fair Fund to Huntington Bank, and that the Fund Administrator shall distribute such monies to investors as provided for in the Modified Plan.

By the Commission.

Lynn M. Powalski
Lynn M. Powalski
Deputy Secretary

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[2] Exchange Act Release No. 70222 (Aug. 16, 2013).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72598 / July 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-12868

In the Matter of PACKETPORT.COM, INC., RONALD DURANDO, MICROPHASE CORP., ROBERT H. JAFFE, GUSTAVE DOTOLI, M. CHRISTOPHER AGARWAL, and THEODORE KUNZOG, Respondents.	ORDER DIRECTING DISBURSEMENT OF DISGORGEMENT FUND

On October 6, 2011, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") in connection with this proceeding pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 CFR 201.1103.[1] The Notice advised parties that they could obtain a copy of the Proposed Plan of Distribution ("Plan") at www.sec.gov. The Notice also advised that all persons desiring to comment on the Plan could

[1] Exchange Act Rel. No. 65490 (Oct. 6, 2011).

submit their comments, in writing, within 30 days of the date of the Notice. No comments were received in response to the Notice. On December 12, 2011, the Commission issued an Order Approving Distribution Plan.[2]

The Plan provides for the distribution of the disgorgement paid by the Respondents, plus any accumulated interest earned, less any taxes, fees, or expenses incurred in the administration of the Plan (the "Disgorgement Fund") to investors according to the methodology set forth in the Plan. The Fund Administrator has submitted to the Commission staff a validated list of payees and payment amounts. Commission staff has reviewed the validated list and requests that, pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans, the Commission authorize the transfer of $906,127.26 from the Disgorgement Fund to U.S. Bank for distribution in accordance with the Plan.

Accordingly, it is ORDERED that the Commission staff shall transfer $906,127.26 from the Disgorgement Fund to U.S. Bank, and that the Fund Administrator shall distribute such monies to investors as provided for in the Plan.

By the Commission.

Lynn M. Powalski

Lynn M. Powalski
Deputy Secretary

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[2] Exchange Act Rel. No. 65936 (Dec. 12, 2011).

Commissioner Aguilar
Commissioner Piwowar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72602 / July 14, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3566 / July 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15970

In the Matter of **ERNST & YOUNG LLP,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C(a)(2)[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii)[2] of the Commission's Rules of Practice against Ernst & Young LLP ("Respondent" or "EY").

[1] Section 4C(a)(2) provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct.

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

These proceedings arise out of certain legislative advisory services provided by Washington Council EY ("WCEY"), which has been part of EY since 2000.[3] Prior to 2009, certain conduct related to WCEY's provision of legislative advisory services violated the independence rules with respect to two of EY's SEC-registrant audit clients. For example, WCEY sent letters urging passage of bills to congressional staff on behalf of one of its clients (hereinafter, "Client A"). These bills were important to Client A's business interests. In another instance, WCEY asked congressional staff to insert into a bill a provision favorable to Client A. For another audit client (hereinafter, "Client B"), WCEY attempted to persuade congressional offices to withdraw their support for legislation detrimental to that client's business interests. In addition, WCEY worked closely with congressional staff in drafting an alternative bill more favorable to Client B. WCEY also marked up a draft of the alternative bill, inserting specific language written by Client B, and sent the mark-up to congressional staff.

Despite providing the services described herein, EY repeatedly represented that it was "independent" in audit reports issued on Client A's and Client B's financial statements, which were included or incorporated by reference in public filings with the Commission. By doing so, EY violated Rule 2-02(b)(1) of Regulation S-X and caused Client A and Client B to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. EY's conduct also constituted improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

B. RESPONDENT

EY is a professional services limited liability partnership, headquartered in New York City, with offices located throughout the United States. It is a member firm of Ernst &Young

[3] In May 2000, Washington Counsel, P.C. merged into EY. The firm now operates as Washington Council EY.

Global Limited and provides auditing, consulting, and tax services to a variety of companies, including companies whose securities are registered with the Commission and trade in the U.S. markets.

C. RELEVANT ISSUERS

At all relevant times, Client A and Client B had shares registered with the Commission pursuant to Exchange Act Section 12(b) and filed annual Reports on Form 10-K with the Commission.

D. FACTS

WCEY

1. WCEY's legislative advisory services include meeting with congressional staff and attempting to influence pending legislation on behalf of its clients. At the time of the conduct discussed herein, some of WCEY's clients were also SEC-registrant audit clients of EY.

2. EY issued a written independence policy intended to provide guidance on the provision of legislative advisory services to audit clients. While EY provided some guidance on the policy, it did not provide WCEY with formal, in-person training specifically tailored to the policy.

Legislative Advisory Work for Client A

3. On at least three occasions prior to 2009, WCEY's provision of legislative advisory services for Client A placed WCEY, and therefore EY, in the position of being an advocate for an audit client in violation of the independence rules.[4] Each instance involved legislation important to Client A.

4. On the first occasion, WCEY learned about an upcoming vote in the U.S. House of Representatives. WCEY informed Client A about the vote and obtained a letter from a top executive at Client A addressed to the House leadership and supporting passage of the bill. Just a few hours before the scheduled vote, WCEY e-mailed the letter to staff in various congressional offices. In the e-mail, WCEY congratulated the congressional staff on bringing the bill to the floor and noted that the attached letter encouraged immediate passage of the bill. After the vote, WCEY e-mailed Client A to inform it that the letters made it to the House prior to the vote.

5. On the second occasion, WCEY sent a letter signed by Client A to the leadership in the U.S. Senate and House of Representatives. The letter urged Congress to pass certain legislation of strategic importance to Client A. The letter also listed specific items to be included in the legislation.

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[4] The services described herein, with respect to both Client A and Client B, occurred over a several-year period in the mid-2000s, ceasing in 2008.

6. On the third occasion, Client A was interested in inserting a specific provision into a pending bill. Client A asked WCEY to raise the issue with a U.S. Senate staffer. WCEY reported back to Client A, stating that the firm had asked the Senate staffer about the provision. The Senate staffer indicated that it would be difficult to get the provision included in the bill, but WCEY said it could make a case for it. Several months later, WCEY again contacted the Senate staffer about the chance of having the specific provision included in the legislative package.

Legislative Advisory Work for Client B

7. On at least two occasions prior to 2009, WCEY's provision of legislative advisory services for Client B placed WCEY, and therefore EY, in the position of being an advocate for an audit client in violation of the independence rules. This instance involved legislation important to Client B.

8. Client B retained WCEY in an effort to defeat a legislative proposal that Client B believed would be detrimental to its business interests.

9. WCEY met with staff representing U.S. Senators who were in favor of the proposal. The purpose of these meetings was for WCEY to persuade the Senate staff to withdraw their support for the proposal.

10. After these meetings, Client B sought an amendment related to the proposal. WCEY identified third parties and urged them to approach a U.S. Senator and ask for an amendment. WCEY provided the third parties with two alternative draft amendments to be presented to the Senator.

11. WCEY also developed a strategy to push for an alternative bill more favorable to Client B than the original proposed legislation. Specifically, WCEY and Client B worked closely with a staffer for a U.S. House of Representatives member who planned to introduce the alternative bill. WCEY exchanged drafts of the alternative bill with the staffer. In an e-mail to WCEY, the staffer acknowledged that the current draft incorporated a number of suggestions from WCEY.

12. Subsequently, WCEY and Client B met again with the House staffer and provided additional suggestions for the alternative bill. The House staffer provided WCEY with a draft of the alternative bill and requested additional feedback. WCEY then shared the draft with Client B. When a Client B employee saw the draft, he said he was highly encouraged because his language was included.

13. WCEY conferred further with Client B and then conveyed to the House staffer additional suggestions for the alternative bill. For example, WCEY told the staffer about concerns that Client B had about some specific language in the alternative bill. WCEY provided the staffer with new language that had been written by Client B.

14. WCEY pointed to its influence in a memorandum to Client B's president. WCEY wrote that it "helped to tamp down activity" on legislation that would have harmed Client B's business. WCEY described how it worked with congressional staff prior to the introduction of the bill to minimize any impact on Client B's business.

E. LEGAL ANALYSIS

Basic Principles

15. "Public faith in the reliability of a corporation's financial statements depends upon the public perception of the outside auditor as an independent professional." SEC v. Arthur Young, 465 U.S. 805, 819 n.15 (1984). In fact, "[i]f investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost." Id.

16. The Commission has stated that it

> will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

Rule 2-01(b) of Regulation S-X (emphasis added).

17. "In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service . . . places the accountant in a position of being an advocate for the audit client." Preliminary Note to Rule 2-01 of Regulation S-X, ¶ 2; see "Revision of the Commission's Auditor Independence Requirements," Exchange Act Rel. 42994, 45 Fed. Reg. 43148, 43149 (July 12, 2000) (Proposing Release) ("an accountant is not independent whenever, during the audit and professional engagement period, the accountant . . . acts as an advocate for the audit client").

Violations

18. As a result of the conduct described above, EY violated Rule 2-02(b)(1) of Regulation S-X, which requires that each accountant's report state whether the audit was made in accordance with generally accepted auditing standards. Exchange Act Release No. 49708 provides that, for financial statements dated after May 24, 2004, the Rule's reference to "generally accepted auditing standards" means the standards of the PCAOB and the applicable Commission regulations, both of which require an auditor to be independent of its client. See, e.g., PCAOB Auditing Standards, Independence, AU § 220.03. A violation occurred each time that EY issued an audit report for one of the two audit clients (or issued a consent for the filing of an audit report in later filings) that incorrectly stated that the audits were performed in accordance with the standards of the PCAOB, where either the period covered by the audit, or the period of the audit work, or both, overlapped with prohibited conduct.

19. As a result of the conduct described above, EY caused Client A and Client B to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require that financial statements included in annual reports filed with the Commission be audited by an independent

accountant. EY knew, or should have known, that its conduct would cause the audit clients to violate these provisions.

20. As a result of the conduct described above, EY also engaged in improper professional conduct, within the meaning of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

EY's Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff. For example, in June 2012, EY voluntarily issued new guidance restricting such legislative advisory services. EY issued similar final guidance in May 2013.

F. FINDINGS

Based on the foregoing, the Commission finds that Respondent EY: (a) committed violations of Rule 2-02(b)(1) of Regulation S-X; (b) caused violations of Exchange Act Section 13(a) and Exchange Act Rule 13a-1 by Client A and Client B; and (c) engaged in improper professional conduct pursuant to Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent EY shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b)(1) of Regulation S-X, Section 13(a) of the Exchange Act, and Rule 13a-1 promulgated thereunder.

B. Respondent EY is hereby censured.

C. Respondent EY shall, within ten (10) days of the issuance of this Order, pay disgorgement of $1,240,000, together with prejudgment interest thereon of $351,925.98, and a civil money penalty of $2,480,000, for a total of $4,071,925.98, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EY as a Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order must be simultaneously sent to Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72609 / July 15, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3876 / July 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15971

In the Matter of ALBERT HALLAC, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), against Albert Hallac ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Hallac has been the founder and president of Weston Capital Asset Management, LLC ("Weston"), a limited liability company formed in 2000 and an investment adviser previously registered with the Commission. Hallac, 76 years old, is a resident of Palm Beach, Florida.

2. On July 7, 2014, a judgment was entered by consent against Hallac, providing permanent injunctive relief under Section 10(b) of the Exchange Act, and Rules 10b-5(a) and (c) thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder in the civil action entitled Securities and Exchange Commission v. Weston Capital Asset Management, LLC, et al., Civil Action Number 14-CV-80823-COHN in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that from at least August 2011 through June 2012, Weston and Hallac misappropriated hedge fund client assets in contravention of fund offering documents.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Hallac's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b) (6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Hallac be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order;

and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72612 / July 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15972

In the Matter of Alaska Gold Corp., Blaze Energy Corp., Call Now, Inc., Hunt Global Resources, Inc., Imperial Petroleum Recovery Corporation, Metropolitan Mines Corporation, Limited, and SulphCo, Inc. Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS[1]

1. Alaska Gold Corp. ("AKGC") (CIK No. 1318196) is a defaulted Nevada corporation located in Henderson, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AKGC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended February 29, 2012, which reported a net loss of $2,996,130 for the prior nine months. As of July 14, 2014, the common stock of AKGC was quoted on OTC Link operated by

[1]The short form of each issuer's name is also its stock symbol.

OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Blaze Energy Corp. ("BLZE") (CIK No. 1442215) is a void Delaware corporation located in Boise, Idaho with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BLZE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2013, which reported a net loss of $41,048 for the prior nine months. Prior to the September 30, 2013 Form 10-Q, BLZE had not filed any periodic reports since it filed a Form 10-Q on December 8, 2008 for the period ended September 30, 2008. As of July 14, 2014, the common stock of BLZE was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Call Now, Inc. ("CLNW") (CIK No. 869484) is a defaulted Nevada corporation located in Selma, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CLNW is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss attributable to CLNW of $714,960 for the prior six months. As of July 14, 2014, the common stock of CLNW was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Hunt Global Resources, Inc. ("HGCO") (CIK No. 1377318) is a noncompliant Colorado corporation located in The Woodlands, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). HGCO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2012, which reported a net loss of $8,006,473 for the prior three months. As of July 14, 2014, the common stock of HGCO was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Imperial Petroleum Recovery Corporation ("IRECQ") (CIK No. 1020448) is a defaulted Nevada corporation located in The Woodlands, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IRECQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended October 31, 2011, which reported a net loss of $941,982 for the prior twelve months. On January 31, 2013, IRECQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Texas, which was converted to a Chapter 11 proceeding on April 4, 2013, and was still pending as of July 14, 2014. As of July 14, 2014, the common stock of IRECQ was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Metropolitan Mines Corporation, Limited ("MEMLA") (CIK No. 65381) is an Idaho corporation located in Wallace, Idaho with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MEMLA is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended May 31, 1997, which reported a net loss of $77,038 for the year. As of July 14,

2014, the common stock of MEMLA was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. SulphCo, Inc. ("SLPHQ") (CIK No. 1096560) is a revoked Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SLPHQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2011, which reported a net loss of $1,329,765 for the prior six months. On September 16, 2011, SLPHQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Texas, which was still pending as of July 10, 2014. As of July 14, 2014, the common stock of SLPHQ was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 16, 2014

In the Matter of

Alaska Gold Corp.,
Blaze Energy Corp.,
Call Now, Inc.,
Hunt Global Resources, Inc.,
Imperial Petroleum Recovery Corporation,
Metropolitan Mines Corporation, Limited, and
SulphCo, Inc.

File No. 500-1

ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alaska Gold Corp. because it has not filed any periodic reports since the period ended February 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Blaze Energy Corp. because it has not filed any periodic reports since the period ended September 30, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Call Now, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hunt Global Resources, Inc. because it has not filed any periodic reports since the period ended March 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Imperial Petroleum Recovery Corporation because it has not filed any periodic reports since the period ended October 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metropolitan Mines Corporation, Limited because it has not filed any periodic reports since the period ended May 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SulphCo, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 16, 2014, through 11:59 p.m. EDT on July 29, 2014.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9613 / July 16, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72616 / July 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15973

In the Matter of

TONEY ANAYA,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Toney Anaya ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing

Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

From in or about August 2009 through January 24, 2011, Respondent served as Chairman and Chief Executive Officer of Natural Blue Resources, Inc. ("Natural Blue"), an issuer that filed periodic and other reports with the Commission that omitted material information concerning purported outside consultants James E. Cohen ("Cohen") and Joseph A. Corazzi ("Corazzi"). While the public filings signed by Respondent in his capacity as Chairman and CEO of Natural Blue disclosed the consultants' agreement with Natural Blue, those filings failed to disclose both the consultants' disciplinary histories and the fact that Cohen and Corazzi were *de facto* officers of Natural Blue. Respondent knew of Cohen's criminal history and Corazzi's regulatory history at the time he signed filings submitted by Natural Blue to the Commission, and also knew, when signing those filings, that both Cohen and Corazzi exercised substantial influence and control over Natural Blue as *de facto* officers. Through this conduct, Respondent negligently violated Section 17(a)(2) of the Securities Act by failing to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Respondent

1. Respondent was the Chief Executive Officer and Chairman of the Board of Natural Blue from August 2009 until his resignation from Natural Blue on January 24, 2011. During that period, Natural Blue filed periodic and interim reports with the Commission. Respondent, 73 years old, lives in Santa Fe, New Mexico, and is a former Governor and former Attorney General for the state of New Mexico. Respondent is presently an attorney licensed to practice law in New Mexico.

2. Respondent participated in an offering of Natural Blue stock, which is a penny stock.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entities

3. Natural Blue was a Delaware corporation with its principal place of business in Woburn, Massachusetts. Natural Blue's securities formerly traded on the Over-the-Counter Bulletin Board under the ticker symbol NTUR. In July 2009, a private Nevada corporation founded by James E. Cohen ("Cohen") and Joseph A. Corazzi ("Corazzi") was merged into the company, resulting in a change of control of Natural Blue. Natural Blue's corporate charter was declared forfeited by the Delaware Secretary of State in November 2010 due to failure to maintain a registered agent, and the company has not filed a periodic report with the Commission since it filed a Form 10-Q report for the quarterly period ended September 30, 2010 (originally filed in November 2010 and amended in February 2011).

4. JEC Corp., incorporated in Nevada in May 2002, was a privately-held company organized to engage in consulting work. JEC Corp.'s principal place of business was Windermere, Florida, and it was owned by James E. Cohen, who was its president, and his family. JEC Corp.'s corporate status has been revoked by the Florida Secretary of State.

Other Relevant Persons

5. James E. Cohen, age 58, is a resident of Windermere, Florida, and a purported consultant to Natural Blue through JEC Corp. Cohen was a registered representative for various broker-dealer firms from 1987 to 1997 and subsequently was barred from association with broker-dealers by the Financial Industry Regulatory Authority. On April 5, 2004, the Supreme Court of the State of New York sentenced Cohen to prison for a term of one to three years and ordered him to pay $545,000 in restitution following his guilty pleas to the crimes of attempted enterprise corruption and attempted grand larceny in the first degree.

6. Joseph A. Corazzi, age 63, is a resident of Albuquerque, New Mexico, and a purported consultant to Natural Blue through JEC Corp. From 1990 to 1999, Corazzi served as Chairman and Chief Executive Officer of Las Vegas Entertainment Network, Inc., a public company registered with the Commission that was sued by the Commission for fraudulently overstating its assets. On October 24, 2002, the Commission obtained a final judgment against Corazzi that permanently enjoined him from violating the antifraud provisions of the federal securities laws, imposed a civil penalty of $75,000, and barred him permanently from acting as an officer or director of a public company.[2]

Background

7. From August 2009 through January 2011 ("the relevant period"), Respondent was the Chief Executive Officer and Chairman of the Board of Natural Blue. Natural Blue, a privately-held Nevada company, went public in August 2009 through a reverse merger with Datameg Corporation ("Datameg"). Following the reverse merger with Natural Blue (Nevada), Datameg changed its name to Natural Blue, and Respondent became the Chairman and CEO of the public company then known as Natural Blue (Delaware). Natural Blue's purported

[2] *SEC v. Las Vegas Entertainment, et al.*, 2:02-cv-07852-JFW-FMO (C.D. Cal.), Lit. Rel. 17779 (October 9, 2002).

mission was to create, acquire or otherwise invest in environmentally-friendly companies. An early initiative undertaken by Natural Blue was to locate, purify, and sell water recovered from underground aquifers in New Mexico and elsewhere, where water resources are depleting. This was an idea formulated by, among others, Respondent, a former governor of New Mexico.

8. Shortly after Natural Blue became public, in November 2009, Cohen and Corazzi (through JEC Corp.) became so-called "consultants" to Natural Blue through two agreements approved by Natural Blue's board of directors. The agreements were, in essence, a fig leaf promoted by Cohen and Corazzi to disguise the real roles of Cohen and Corazzi – namely, as *de facto* officers of Natural Blue.

9. Natural Blue had no revenues, since the company never generated any income through the water purification business, its acquisitions of "green" technology and equipment, or any other line of business. Natural Blue used office space at a facility in Florida owned by a Cohen company and where Cohen had a private office. Virtually all of the officers and directors first appointed at Natural Blue after it became a public company were recommended to the board by Cohen and Corazzi (who had installed their associates on the board when Natural Blue was still private.)

10. From the time of inception, Cohen and Corazzi exercised significant influence over Natural Blue – indeed, it was Cohen who orchestrated a reverse merger in August 2009 that resulted in Natural Blue going public -- but because their disciplinary histories precluded them from serving as officers or directors of a public company, Cohen and Corazzi pressured the board of directors and Natural Blue executives into approving the consultancy agreements with JEC Corp..

11. While Respondent was Chief Executive Officer of Natural Blue from August 2009 to January 24, 2011, Cohen and Corazzi's active involvement in the day-to-day management of Natural Blue dramatically lessened Respondent's influence or practical ability to effect decisions. For example, Respondent was unable to obtain a copy of the company's financial records from the Natural Blue Chief Financial Officer (an associate of Cohen's with whom Cohen shared office space). In fact, towards the end of Respondent's tenure, Cohen and Corazzi essentially orchestrated a total change of corporate control for Natural Blue, without involving Respondent in any of the negotiations. While Respondent repeatedly clashed with Cohen and Corazzi, and at various points attempted to limit Cohen and Corazzi's involvement in Natural Blue, Cohen and Corazzi continued to wield substantial influence over the company notwithstanding Respondent's efforts. Accordingly, Respondent's control of nearly all day-to-day management issues was usurped by Cohen and Corazzi until his resignation in January 2011.

12. Respondent deferred to Cohen and Corazzi and allowed these so-called "consultants" to dictate the company's affairs -- despite knowing (prior to becoming the CEO of Natural Blue) that Corazzi had been barred by the Commission from serving as an officer or director of a public company, and having learned of Cohen's incarceration in or about April 2010, prior to the filing of the first of Natural Blue's three Form 10-Q quarterly reports for 2010.

13. Due in part to Respondent's negligence, Natural Blue failed to disclose publicly during the relevant period the degree of influence that Cohen and Corazzi exercised as *de facto* officers of the company, including the extent of their involvement in its creation, selection of officers and directors, policy making, and management. Natural Blue also failed to disclose Cohen's conviction and Corazzi's permanent officer and director bar and permanent injunction against further violations of the antifraud provisions. In fact, Corazzi is not mentioned in any Natural Blue filing, and Cohen's involvement is disclosed only indirectly.

14. Natural Blue's Form 10-K for the year ended December 31, 2009 (the "10-K") discloses that, in November 2009, Natural Blue entered into a Management Agreement and an Advisory Agreement with JEC. However, it states only that JEC "is owned by one of our shareholders and the shareholder is related to one of our consultants." The 10-K does not specifically identify Cohen nor does it disclose the fact that he recently had served time in state prison for committing the felonies of attempted enterprise corruption and attempted grand larceny in the first degree. The same materially incomplete disclosure about the Management Agreement and the Advisory Agreement with JEC was included in the company's Form 10-Q filings for the first three quarterly periods of 2010.

15. Respondent approved and signed all of Natural Blue's filings as CEO from November 23, 2009 to November 16, 2010.

Violations

16. As a result of the conduct described above, Respondent willfully[3] violated Section 17(a)(2) of the Securities Act [15 U.S.C. §§ 77q(a)(2)] which prohibits fraudulent conduct in the offer or sale of securities.

IV.

Pursuant to this Order, without admitting or denying the findings contained herein, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 8A(g) of the Securities Act and Section 21(B)(a) of the Exchange Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws as described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

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[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

V.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent be, and hereby is, barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, with the right to apply for reentry after (5) years to the appropriate self-regulatory organization or, if there is none, to the Commission.

C. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed by, and before, the Administrative Law Judge assigned to the proceedings instituted against Natural Blue, Cohen and Corazzi on today's date (the "Natural Blue Proceedings").

If Respondent fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of an initial decision in the Natural Blue Proceedings, or from the date of any order of the Commission accepting an offer of settlement in the Natural Blue Proceedings.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 16, 2014

In the Matter of	
Natural Blue Resources, Inc.	**ORDER OF SUSPENSION OF TRADING**
File No. 500-1	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Natural Blue Resources, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on July 16, 2014, through 11:59 p.m. EDT, on July 29, 2014.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9614 / July 16, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72617 / July 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of **NATURAL BLUE RESOURCES, INC., JAMES E. COHEN, and JOSEPH A. CORAZZI,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Natural Blue Resources, Inc. ("Natural Blue" or "NTUR"), James E. Cohen ("Cohen"), and Joseph A. Corazzi ("Corazzi") (collectively, the "Respondents"), and also pursuant to Section 15(b) of the Exchange Act against Cohen and Corazzi. Cohen and Corazzi participated in an offering of Natural Blue stock, which is a penny stock.

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

This case is about a fraudulent scheme orchestrated by two recidivists, Respondents Cohen and Corazzi, who controlled the operation and management decisions of the public company Natural Blue Resources, while calling themselves outside "consultants" so as to profit from the company and to conceal their past disciplinary histories and true status as *de facto* officers of Natural Blue. Cohen and Corazzi created and controlled Natural Blue so that they and their entities could receive money and significant shares of stock, all the while making decisions that resulted in no revenues or viable business operations. While Natural Blue was ostensibly led by former New Mexico Governor Toney Anaya ("Anaya") and, subsequently, Erik

Perry ("Perry"), both Anaya and Perry deferred to Cohen and Corazzi in derogation of their responsibilities, and failed to disclose Cohen and Corazzi's past disciplinary histories and roles as *de facto* officers of Natural Blue. In addition, Natural Blue and Perry made material misrepresentations to investors, including misrepresentations in a February 2011 press release, on the Natural Blue Steel website and verbally to investors. As a result of these actions, Natural Blue, Cohen and Corazzi violated the securities laws.

B. RESPONDENTS

(1) Natural Blue was a Delaware corporation based in Woburn, Massachusetts. As of June 16, 2014, Natural Blue's securities (ticker symbol "NTUR") were quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc., had seven market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). During the relevant period, Natural Blue's securities qualified as a "penny stock" because they did not meet any of the exceptions from the definition of a "penny stock," as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. Natural Blue's corporate charter was declared forfeited by the Delaware Secretary of State in November 2010, and the company has not filed a periodic report with the Commission since it filed a Form 10-Q report for the quarterly period ended September 30, 2010.

(2) Cohen, age 58, is a resident of Windermere, Florida, and a purported consultant to Natural Blue through the entity "JEC Corp." As described in greater detail below, Cohen was at all relevant times a "person participating in an offering of penny stock" because he engaged in activities for the purpose of issuing, trading and/or inducing or attempting to induce the purchase or sale of Natural Blue securities. Cohen was a registered representative for various broker-dealers from 1987 to 1997 and subsequently was barred from association by the National Association of Securities Dealers ("NASD").[1] On April 5, 2004, the Supreme Court of the State of New York sentenced Cohen to prison for a term of one to three years and ordered him to pay $545,000 in restitution following his guilty pleas to the crimes of attempted enterprise corruption and attempted grand larceny in the first degree.

(3) Corazzi, age 63, is a resident of Albuquerque, New Mexico, and a purported consultant to Natural Blue through the entity "JEC Corp." As described in greater detail below, Corazzi was at all relevant times a "person participating in an offering of penny stock" because he engaged in activities for the purpose of issuing, trading and/or inducing or attempting to induce the purchase or sale of Natural Blue securities. From 1990 to 1999, Corazzi served as Chairman and

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[1] On March 30, 1999, Cohen signed an Acceptance, Waiver and Consent with NASD resulting in a $200,000 fine, censure and bar from association with any NASD member firm in any capacity. According to the U-6 filing, Cohen manipulated the price of an unidentified stock to benefit himself and others. On August 8, 1984, the SEC accepted an Offer of Settlement from Cohen for findings that he violated the antifraud provisions of the securities laws in connection to his participation in a 1981 offering of Sequential Information Systems, Inc. As a part of the settlement, Cohen was suspended from association with any NASD member firm for 30 days and required to enroll in a regulatory compliance course. *SEC v. Rooney Pace, Inc., et al.* (Rel. 34-21179).

Chief Executive Officer of Las Vegas Entertainment Network, Inc., a public company registered with the Commission that was sued by the Commission for fraudulently overstating its assets. On October 24, 2002, the Commission obtained a final judgment against Corazzi that permanently enjoined him from violating the antifraud provisions, imposed a civil penalty of $75,000, and barred him permanently from acting as an officer or director of a public company.[2]

C. RELATED INDIVIDUALS AND ENTITIES

(4) Atlantic Dismantling and Site Contractors Corp. ("Atlantic Dismantling") is a corporation based in Woburn, Massachusetts. Atlantic Dismantling was purportedly organized in July 2008 to engage in the business of demolition and sitework on local construction projects, which it did principally as a subcontractor. The company presently is inactive and in bankruptcy proceedings.

(5) Atlantic Acquisitions, LLC was a limited liability company based in Woburn, Massachusetts and founded in July 2010, allegedly to acquire rights to defunct industrial buildings for the purpose of salvaging and selling scrap metal. Atlantic Acquisitions, LLC became the parent company of Atlantic Dismantling in January 2011 and was involuntarily dissolved in June 2013.

(6) JEC Corp. was a Nevada corporation that was organized in May 2002 and owned by Cohen's family. Cohen served as its President, and Cohen's wife, Patricia, was its Treasurer. The company's corporate status has been revoked.

(7) Blue Earth Solutions, Inc. ("Blue Earth") was a Nevada corporation organized in March 2006 under the name RM Health International, Inc. ("RM Health"). In May 2008 RM Health merged with Blue Earth, a privately-held Delaware corporation, and engaged in the business of recycling polystyrene foam. It filed periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act, and its securities were quoted on the OTC Bulletin Board. Cohen's wife, Patricia, was the Chairman of the Board of Directors, the CEO, and the largest shareholder of the company, and Cohen's son, James, Jr., was a director and the third-largest shareholder. The company's corporate status has been revoked.

(8) Anaya, age 73, was the Chairman and Chief Executive Officer of Natural Blue from August 2009 until January 2011. Anaya is a licensed attorney in New Mexico, where he also resides. He was the Governor of New Mexico from 1983 to 1986 and, prior to that, was the Attorney General of New Mexico from 1975 to 1978.

(9) Perry, age 47, was the Chairman and President of Natural Blue from January 2011 until June 2011. He is believed to have resided in Beverly, Massachusetts prior to his relocation in mid-2011 to Sofia, Bulgaria.

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[2] *SEC v. Las Vegas Entertainment, et al.*, 2:02-cv-07852-JFW-FMO (C.D. Cal.), Lit. Rel. 17779 (October 9, 2002).

D. IN AUGUST 2009, COHEN AND CORAZZI BEGAN THE SCHEME TO RUN NATURAL BLUE BEHIND THE SCENES AS "CONSULTANTS."

(10) In August 2009, Natural Blue, a privately-held Nevada company, went public through a reverse merger with Datameg Corporation ("Datameg"). Datameg became Natural Blue in July 2009 after Natural Blue (Nevada) was merged into it, and Natural Blue (Nevada) became a subsidiary of the public company. Natural Blue's purported mission was to create, acquire or otherwise invest in environmentally-friendly companies. An early initiative undertaken by Natural Blue was to locate, purify, and sell water recovered from underground aquifers in New Mexico and elsewhere, where water resources are depleting. This was an idea formulated by, among others, Anaya, a former governor of New Mexico.

(11) Natural Blue had no revenues, since the company never generated any income through water purification, its acquisitions of "green" technology and equipment, or any other line of business. Natural Blue used office space at a facility in Florida where Cohen had a private office. Virtually all of the officers and directors first appointed at Natural Blue after it became a public company were recommended to the board by Cohen and Corazzi (who had installed their associates on the board when Natural Blue was still private.)

(12) From the time that Natural Blue went public in August 2009 through late 2011 (the "relevant period"), Cohen and Corazzi exercised significant influence over the company. Indeed, it was Cohen who orchestrated the reverse merger in August 2009 that resulted in Natural Blue going public. However, because their disciplinary histories precluded them from serving as officers or directors of a public company, Cohen and Corazzi pressured the board of directors and Natural Blue executives into approving the consultancy agreements with JEC Corp., Cohen's family-owned company.

(13) From August 2009 through 2011, Cohen and Corazzi recommended virtually all of the people appointed to Natural Blue's board of directors and to fill key officer positions. The majority of those appointed to the board or hired as officers had a significant preexisting business and/or social relationship to Cohen or Corazzi.

(14) In November 2009, Cohen and Corazzi (through JEC Corp.) became "consultants" to Natural Blue through two agreements approved by Natural Blue's board of directors. The lucrative agreements were a fig leaf to disguise the real roles of Cohen and Corazzi – namely, as *de facto* officers of Natural Blue.

E. THE NOVEMBER 2009 CONTRACTS CONCEALED COHEN AND CORAZZI'S ROLES AS *DE FACTO* OFFICERS OF NATURAL BLUE.

(15) In November 2009, Natural Blue entered into an Advisory Agreement with JEC Corp., a business entity run by Cohen for consulting, pursuant to which JEC Corp agreed to research and present potential merger and acquisition targets for NTUR.

(16) Also in November 2009, Cohen and Corazzi pushed Natural Blue to change its focus to the recycled steel business and in November 2009, Natural Blue entered into a separate Management Agreement with JEC Corp. to organize and manage a new steel subsidiary called Natural Blue Steel ("NBS"). NBS was purportedly created to purchase and resell recycled steel, predominantly through acquiring and demolishing abandoned buildings, and Cohen and Corazzi installed a business associate as president of NBS. Both the Advisory and Management agreements specified that JEC would provide services through Cohen and Corazzi.

(17) To the extent Cohen or Corazzi did any "consulting" work to justify the lucrative payments they received from Natural Blue under any of these agreements, it was limited to their fruitless efforts to identify viable acquisitions (almost all of which were affiliated with Cohen) and/or to identify other sources of revenue (none of which ever came to pass.)

(18) Moreover, though their roles as consultants to Natural Blue were purportedly defined by the two JEC agreements, Cohen and Corazzi directed other aspects of Natural Blue's activities. Among other things, Corazzi was the company's primary liaison with vendors who designed and updated Natural Blue's website.

(19) Cohen and Corazzi profited financially from Natural Blue through their receipt of both monetary payments and shares of Natural Blue stock. The payments they received, including fees and expenses, were allegedly for consulting work performed for Natural Blue through JEC Corp. In all, from May 2009 to August 2010, Cohen and JEC Corp. received at least $249,000, with another $101,000 going to Blue Earth, the microcap company controlled by Cohen. Companies affiliated with Corazzi also received more than $171,000 in payments. Cohen also arranged for Natural Blue to "loan" Blue Earth $100,000 in connection with the purported acquisition of Blue Earth by Natural Blue; however, the acquisition never occurred and the "loan" was never repaid by Blue Earth.

(20) Cohen and Corazzi also received large amounts of Natural Blue stock, although they disguised that fact by having the shares, in which they had a beneficial interest, issued to others. When Cohen formed Natural Blue as a private company, he arranged for most of his founder's shares to be issued in the names of his wife and children and a family business entity. Those shares were converted to Natural Blue shares following the reverse merger. Later, for putting together a deal with Atlantic Dismantling in January 2011, Cohen received five million Natural Blue shares, which he directed be issued in the name of JEC Corp. By mid-2011, Cohen's family members and his affiliated entities had received more than 12.8 million shares, which represented approximately 11.5% of the issued and outstanding shares of Natural Blue.

(21) When Natural Blue stock was issued, Corazzi arranged for all of his shares to be issued to various business entities that he controlled or in which he had a beneficial interest. Later, he had many of those shares transferred into his name

and sold them through his brokerage account and in private transactions. Like Cohen, Corazzi received millions of Natural Blue shares for his role in the January 2011 deal with Atlantic. By mid-2011, Corazzi owned more than 5.2 million shares in his name, representing approximately 4.7% of the outstanding Natural Blue shares. In addition, entities associated with Corazzi received approximately 4.1 million shares, or approximately 3.7% of the total outstanding shares. In February 2010, one of the entities associated with Corazzi called "Modaz, Ltd." transferred 1,700,000 shares to him at nominal cost pursuant to an agreement. Over time, from in or about November 2010 through June 2011, Corazzi realized profits from Natural Blue stock sales of more than $78,000.

F. NATURAL BLUE MISLED INVESTORS BY FAILING TO DISCLOSE THAT COHEN AND CORAZZI WERE *DE FACTO* OFFICERS.

(22) While Anaya was CEO of Natural Blue from August 2009 to January 24, 2011, Cohen and Corazzi's active involvement in the day-to-day management of Natural Blue dramatically lessened Anaya's influence or practical ability to effect decisions. For example, Anaya was unable to obtain a copy of the company's financial records from the Natural Blue Chief Financial Officer (an associate of Cohen's with whom Cohen shared office space). In fact, towards the end of Anaya's tenure, Cohen and Corazzi essentially orchestrated a total change of corporate control for Natural Blue, without involving Anaya in any of the negotiations. While Anaya repeatedly clashed with Cohen and Corazzi, and at various points attempted to limit Cohen and Corazzi's involvement in Natural Blue, Cohen and Corazzi continued to wield substantial influence over the company notwithstanding Anaya's efforts. Accordingly, Anaya's control of nearly all day-to-day management issues was usurped by Cohen and Corazzi until his resignation in January 2011.

(23) Anaya deferred to Cohen and Corazzi and allowed these so-called "consultants" to dictate the company's affairs -- despite knowing (prior to becoming the CEO of Natural Blue) that Corazzi had been barred by the Commission from serving as an officer or director of a public company, and having learned of Cohen's incarceration in or about April 2010, prior to the filing of the first of Natural Blue's three Form 10-Q quarterly reports for 2010.

(24) Due in part to Anaya's negligence, Natural Blue failed to disclose publicly during the relevant period the degree of influence that Cohen and Corazzi exercised as *de facto* officers of the company, including the extent of their involvement in its creation, selection of officers and directors, policy making, and management. Natural Blue also failed to disclose Cohen's conviction and Corazzi's permanent officer and director bar and permanent injunction against further violations of antifraud provisions of the securities laws. In fact, Corazzi is not mentioned in any Natural Blue filing, and Cohen is disclosed only indirectly.

(25) Natural Blue's Form 10-K for the year ended December 31, 2009 states that, in November 2009, Natural Blue entered into a Management Agreement and an

Advisory Agreement with JEC Corp. However, it states only that JEC Corp. "is owned by one of our shareholders and the shareholder is related to one of our consultants." The 2009 Form 10-K does not specifically identify Cohen nor does it disclose the fact that he recently had served time in state prison for committing the felonies of attempted enterprise corruption and attempted grand larceny in the first degree. The same materially incomplete disclosure about the Management Agreement and the Advisory Agreement with JEC Corp. was included in the company's Form 10-Q filings for the first three quarterly periods of 2010 (the "2010 10-Qs").

(26) The 2009 Form 10-K for Natural Blue was filed with the Commission on April 2, 2010, and the three 2010 10-Qs were filed on May 14, 2010, August 13, 2010, and November 22, 2010, respectively. An amended 10-Q for the third quarter of 2010 was filed on February 8, 2011.

(27) Anaya approved and signed all of Natural Blue's filings as CEO from November 23, 2009 to November 16, 2010.

(28) After Perry succeeded Anaya as Natural Blue's CEO in January 2011, he approved and signed an amended Form 10-Q for the third quarter of 2010 that included the disclosure described above in ¶25. Perry knew, before he became CEO, that Cohen had been incarcerated and that Corazzi "had a problem with the SEC" and could no longer be an officer or director of a public company.

(29) In June 2011, Perry was abruptly dismissed as the CEO of Natural Blue at a board meeting. Cohen secretly attended the conference call with the board during which Perry was ousted and replaced with a Cohen friend and former business partner. As the audio recording of the meeting reveals, Cohen directed Perry's ouster because a plan being proposed by Perry would have significantly decreased Cohen's and Corazzi's influence over Natural Blue and their ownership interest.

G. <u>IN JANUARY 2011, DESPITE THEIR STATUS AS "OUTSIDE CONSULTANTS," COHEN AND CORAZZI ORCHESTRATED A CHANGE IN CORPORATE CONTROL FOR NATURAL BLUE.</u>

(30) In January 2011, Natural Blue announced that it had entered into an agreement with Massachusetts-based Atlantic Acquisitions and its wholly-owned subsidiary, Atlantic Dismantling (collectively, "Atlantic"). The agreement resulted in a change of control of Natural Blue and, according to press releases issued by Natural Blue in January and February 2011, a dramatic change in its business prospects. In fact, the Natural Blue/Atlantic transaction was orchestrated by Cohen and Corazzi, with virtually no input from Natural Blue's management.

(31) In the fall of 2010, while seeking financing for Atlantic, Perry (then the CFO of Atlantic) came into contact with Cohen and Corazzi. Atlantic's business discussions with Cohen and Corazzi eventually resulted in a deal between Atlantic and Natural Blue that was consummated in January 2011.

(32) The transaction between Atlantic and Natural Blue resulted in a complete change in corporate control for Natural Blue, which was orchestrated entirely by the purported "consultants" Cohen and Corazzi. The principals of Atlantic dealt exclusively with Cohen and Corazzi throughout the negotiations. Indeed, throughout the negotiations, and until the eve of closing, the Atlantic principals believed that Cohen and Corazzi were the people who ran Natural Blue.

(33) In 2010, Natural Blue failed to pay its Delaware registered agent's fee and the registered agent resigned. The company failed to engage another agent in Delaware and, in November 2010, its corporate charter in Delaware was forfeited. As a result, Natural Blue was legally unable to conduct business and could not legally enter into the January 2011 agreement with Atlantic or any other contract.

(34) Nonetheless, the deal proceeded between Atlantic and Natural Blue. In January 25, 2011, Natural Blue issued a press release announcing that the company had entered into "two key agreements to advance the growth, business interests, and future expected profitability of the Company." The release quoted Anaya as saying, in a letter to Natural Blue shareholders, that its agreement with Atlantic "provides for Atlantic to assign tens of millions of dollars in Atlantic steel contracts to [Natural Blue] and to pursue future steel contracts on behalf of Natural Blue Steel Atlantic, LLC, a wholly-owned subsidiary to be formed by [Natural Blue]." The second agreement concerned a firm with fund-raising expertise that was to assist Natural Blue in raising capital for new steel projects. The release also said:

> As a result of our new relationship with Atlantic, their associates, finance sources, and their key executives, Natural Blue Steel expects to see more than $35 million in new revenues over the next year from new demolition sites that will operate under the Natural Blue Steel Atlantic division. While Atlantic contracts currently involve 14 sites, we expect to be operating with Atlantic at more than 30 sites in the next several months.

(35) In fact, not a single Atlantic contract was assigned to Natural Blue, and Natural Blue Steel/Atlantic ("NBS/Atlantic") received no revenues from Atlantic contracts. Moreover, according to the principals of Atlantic, Atlantic was legally unable to assign its existing contracts when it entered into the agreement.

H. NATURAL BLUE MADE FALSE AND MISLEADING STATEMENTS IN THE FEBRUARY 11, 2011 PRESS RELEASE.

(36) On February 11, 2011, Natural Blue issued a press release announcing that it had incorporated a wholly-owned subsidiary, NBS/Atlantic. The press release announced that NBS/Atlantic:

> has entered into two new environmental restoration/demolition contracts totaling $2.5 million dollars. These projects involve remediation of contaminated soil and ground water as part of a major infrastructure project taking place with the transit authority in Boston, MA. In addition, [the NBS/Atlantic CEO] announced that NBS Atlantic was negotiating another $6 million dollars in demolition and soil remediation contracts in southern Massachusetts and Rhode Island. Should NBS Atlantic receive these contracts they would bring NBS Atlantic's total expected revenue for the year to in excess of $50 million dollars.

(37) The February 11, 2011 release further quoted CEO Perry as saying: "This is a great beginning to our revenue stream and I'm thrilled that our team [has] secured these contracts so quickly given the rough weather we've all experienced."

(38) The statements in the press release were false and misleading because NBS/Atlantic had not entered into these or any other contracts with the transit authority in Boston (the Massachusetts Bay Transit Authority or MBTA), nor had Natural Blue or Atlantic.

(39) Moreover, there was no basis in fact for the statement that, should NBS/Atlantic obtain the $6 million in contracts in Massachusetts and Rhode Island, it would bring the company's total expected revenue for the year to in excess of $50 million. In fact, NBS/Atlantic had no signed contracts as of that date, and never did have any revenues.

I. NATURAL BLUE MADE FALSE AND MISLEADING STATEMENTS ON THE NATURAL BLUE STEEL WEBSITE.

(40) Beginning in or about January 2011, Natural Blue also made false and misleading statements on its website in a section under the heading "Natural Blue Steel." As of January 2011, the NBS section of the website bearing the headline "Current Projects" contained a chart listing 19 projects divided among three categories: "In Process," "Work on Hand," and "End of Process." This information was false and misleading, because none of the listed projects were NBS contracts or contracts of Natural Blue or its subsidiaries. Rather, most of the projects were Atlantic contracts, which had not been and never were assigned to NBS or NBS/Atlantic.

(41) In addition, in the category "Work on Hand," the Natural Blue Steel website chart listed MBTA Fairmont Line Readville and MBTA Fairmont Line New Market. As discussed above, these statements were false and misleading because neither NBS, NBS/Atlantic, nor Natural Blue had such contracts with the MBTA. Not even Atlantic had such contracts with the MBTA.

(42) In addition, the NBS chart included a heading, "Total Revenue Expected Thus Far for 2011" and, under it, the amount of $45,359,068.00." That statement was false and misleading because none of the projects listed in the chart were NBS projects, and there was no basis in fact for the revenue figure.

J. NATURAL BLUE MADE FALSE AND MISLEADING ORAL MISSTATEMENTS TO THE NATURAL BLUE SHAREHOLDERS.

(43) After Erik Perry became the chairman and CEO of Natural Blue, he was contacted by various investors, including existing Natural Blue shareholders. Perry discussed the company's prospects with the investors and offered them an opportunity to purchase additional Natural Blue shares at a discount to the then-current market price. In doing so, Perry made material misrepresentations concerning the purported assignment of Atlantic's contracts to Natural Blue, the revenues that Natural Blue purportedly would earn from them, and the jump in its stock price that would result. Based on oral representations by Perry in March 2011, at least three investors purchased Natural Blue stock at $0.10 per share.

(44) Perry's oral representations to those three investors included material misstatements. For example, Perry stated to all three investors that Natural Blue's stock, which was trading at $0.26 per share on that date, should be worth at least $0.60 per share based on the $45 million of projects the company already had and would be worth dollars per share when larger steel contracts were finalized over the next weeks and months. This was a material misstatement because Natural Blue had no contracts for projects. In addition, Perry also told those three investors that Atlantic was merging into Natural Blue and funneling money into Natural Blue. That was also a material misstatement because there was no merger and Atlantic, which had chronic cash flow problems, did not funnel any money into Natural Blue.

(45) In addition, Perry falsely and misleadingly told potential investors that Natural Blue/Atlantic already was working on a large contract in Texas worth more than $5 million and that he personally helped to finance the project using more than $2.5 million of his own money. That was a misstatement because Perry did not use his own funds to fund that project or any Atlantic project.

K. NATURAL BLUE FAILED TO MAKE COMMISSION FILINGS

(46) Natural Blue has a continuing obligation to file periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act because it has filed various registration statements, which went effective, pursuant to the Securities Act, and it appears that, since 2004, there have never been 300 or fewer record holders of its common stock. Natural Blue's last periodic report was a Form 10-Q report for the quarterly period ended September 30, 2010, which it filed originally in November 2010 and amended in February 2011. The company is now delinquent with respect to its annual report on Form 10-K for the year ended December 31, 2010, and all subsequent periodic reports.

L. VIOLATIONS

(47) As a result of the conduct described above, Natural Blue violated, and Cohen and Corazzi willfully violated, Section 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities, by engaging in a device, scheme and/or artifice to defraud and/or engaging in a transaction, practice and/or course of business which operated or would have operated as a fraud or deceit upon the purchaser. Natural Blue, Cohen and Corazzi violated these laws and regulations by creating and operating Natural Blue as a vehicle for Cohen and Corazzi to control and profit from the company, while failing to disclose their roles as de facto officers or their past criminal and regulatory violations to potential investors. Both Cohen and Corazzi knew or were reckless in not knowing that they committed deceptive acts in furtherance of this fraudulent scheme.

(48) Natural Blue violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder by making misrepresentations and omissions of material fact regarding Cohen and Corazzi in Natural Blue's public filings, in failing to name either Cohen or Corazzi as officers and failing to disclose their past criminal and regulatory violations. These misrepresentations and omissions of material fact allowed Natural Blue to obtain money and/or property from both private investors and public shareholders who purchased Natural Blue stock.

(49) Natural Blue violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder by, among other things, misrepresenting material facts to investors in the February 11, 2011 press release, on the Natural Blue Steel website and through oral misstatements to potential investors in Natural Blue.

(50) Natural Blue also failed to make Commission filings in violation of Section 15(d) of the Exchange Act and Rules 15d-1 and 15d-13.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents

Cohen and Corazzi pursuant to 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Natural Blue should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as Section 15(d) of the Exchange Act and Rules 15d-1 and 15d-13, whether Respondents Cohen and Corazzi should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rules 10b-5(a) and 10b-5(c) thereunder, whether each of the Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether, pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act, Respondents Cohen and Corazzi should be prohibited, conditionally or unconditionally, and permanently or for such period of time as shall be determined, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9615 / July 16, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72618 / July 16, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15975

In the Matter of **ERIK H. PERRY,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Erik H. Perry ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of

1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

These proceedings arise out of Respondent's conduct, in 2011, as chief executive officer of an issuer that filed periodic and other reports with the Commission. Through that conduct, Respondent both violated the antifraud provisions of the federal securities laws and caused violations of those provisions by others. Respondent directly violated the antifraud provisions by misrepresenting material facts to investors in a company press release, on the company's website, and through oral misstatements made directly to potential investors. Respondent also made misrepresentations and omissions of material fact in the issuer's public filings with the Commission concerning purported outside consultants, including concealing their criminal and/or regulatory histories. In addition, Respondent caused violations of the antifraud provisions by the issuer and the purported consultants by allowing the purported consultants to control and profit from the company while failing to disclose their roles as *de facto* officers and their disciplinary histories.

Respondent

1. Respondent was the chief executive officer and chairman of the board of Natural Blue Resources, Inc. ("Natural Blue") from January 2011 until June 2011. During that period, Natural Blue filed periodic and interim reports with the Commission. Respondent, 47 years old, resided in Beverly, Massachusetts, prior to relocating, in mid-2011, to Sofia, Bulgaria.

2. Respondent participated in an offering of Natural Blue stock, which is a penny stock.

Other Relevant Entities

3. Natural Blue was a Delaware corporation with it principal place of business in Woburn, Massachusetts. Natural Blue's securities formerly traded on the Over-the-Counter Bulletin Board under the ticker symbol NTUR. Natural Blue's corporate charter was declared forfeited by the Delaware Secretary of State in November 2010 due to failure to maintain a registered agent, and the company has not filed a periodic report with the Commission since it filed

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

a Form 10-Q report for the quarterly period ended September 30, 2010 (originally filed in November 2010 and amended in February 2011).

4. Atlantic Dismantling and Site Contractors Corp. ("Atlantic Dismantling") is a privately held corporation based in Woburn, Massachusetts. Atlantic Dismantling was organized in July 2008 to engage in the business of demolition and sitework, which it did principally as a subcontractor on local construction projects. The company presently is inactive and in bankruptcy proceedings. Respondent was employed by Atlantic Dismantling prior to becoming the chief executive officer and chairman of Natural Blue.

5. Atlantic Acquisitions, LLC was a limited liability company based in Woburn, Massachusetts. It was organized in July 2010 to engage in the business of acquiring rights to defunct industrial buildings for the purpose of salvaging and selling scrap metal. Atlantic Acquisitions, LLC became the parent company of Atlantic Dismantling in January 2011 and was involuntarily dissolved by the Massachusetts Secretary of the Commonwealth in June 2013.

6. JEC Corp., incorporated in Nevada in May 2002, was a privately-held company organized to engage in consulting work. JEC Corp.'s principal place of business was Windermere, Florida, and it was owned by James E. Cohen, who was its president, and his family. JEC Corp.'s corporate status has been revoked by the Florida Secretary of State.

Other Relevant Persons

7. James E. Cohen, age 58, is a resident of Windermere, Florida, and a purported consultant to Natural Blue through JEC Corp. Cohen was a registered representative for various broker-dealer firms from 1987 to 1997 and subsequently was barred from association with broker-dealers by FINRA. On April 5, 2004, the Supreme Court of the State of New York sentenced Cohen to prison for a term of one to three years and ordered him to pay $545,000 in restitution following his guilty pleas to the crimes of attempted enterprise corruption and attempted grand larceny in the first degree.

8. Joseph A. Corazzi, age 63, is a resident of Albuquerque, New Mexico, and a purported consultant to Natural Blue through JEC Corp. From 1990 to 1999, Corazzi served as Chairman and Chief Executive Officer of Las Vegas Entertainment Network, Inc., a public company registered with the Commission that was sued by the Commission for fraudulently overstating its assets. On October 24, 2002, the Commission obtained a final judgment against Corazzi that permanently enjoined him from violating the antifraud provisions of the federal securities laws, imposed a civil penalty of $75,000, and barred him permanently from acting as an officer or director of a public company.[2]

[2] *SEC v. Las Vegas Entertainment, et al.*, 2:02-cv-07852-JFW-FMO (C.D. Cal.), Lit. Rel. 17779 (October 9, 2002).

Background

9. From January 2011 through June 2011 ("the relevant period"), Perry was the chief executive officer and chairman of the board of Natural Blue. Among other things, as chief executive officer, Perry provided content for and approved the publication of Natural Blue's press releases. He also provided information that appeared on Natural Blue's website and approved the content that was published on that website.

10. During the relevant period, on February 11, 2011, Natural Blue issued a press release announcing that the company had incorporated a wholly-owned subsidiary called Natural Blue Steel/Atlantic ("NBS/Atlantic"). The press release further stated that NBS/Atlantic had "entered into two new environmental restoration/demolition contracts totaling $2.5 million" as part of "a major infrastructure project taking place with the transit authority in Boston, MA." In fact, neither NBS/Atlantic nor its parent company, Natural Blue, ever entered into such contracts.

11. The Natural Blue press release, issued on February 11, 2011, also stated that NBS/Atlantic was negotiating another $6 million in contracts in southern Massachusetts and Rhode Island and, if they were obtained, those contracts "would bring NBS/Atlantic's total expected revenue for the year to in excess of $50 million." The press release quoted Perry as saying: "This is a great beginning to our revenue stream and I'm thrilled that our team [has] secured these contracts so quickly." In fact, there was no factual basis for the claim as to expected revenue. NBS/Atlantic had no signed contracts as of that date, and it never had any revenues.

12. During the relevant period, Natural Blue's website, in a section under the heading "Natural Blue Steel," contained a chart listing 19 purported current projects. Two of the projects identified on the chart as "work on hand" were projects of the transit authority in Boston, Massachusetts. The chart also listed the amount of $45,359,068 under the heading "Total Revenue Expected Thus Far for 2011." In fact, neither Natural Blue Steel (a subsidiary of Natural Blue), nor Natural Blue itself, nor any other Natural Blue subsidiary had obtained contracts for any of the projects listed on the chart or any other contracts. As a result, there was no factual basis for the claim as to the total revenue expected.

13. During the relevant period, Perry solicited investments in Natural Blue stock by means of material misrepresentations and omissions. Perry told potential investors, by telephone or in person, that Natural Blue was going to earn millions of dollars in revenues from operating contracts that Atlantic Dismantling had assigned or would assign to the company. Perry told the potential investors that Natural Blue already had contracts worth $45 million and, based on that, its stock should be valued at $0.60 per share, rather than the $0.26 per share it was then trading at. Perry also told the investors that Natural Blue's stock would jump in price and would be worth dollars per share when larger steel contracts were finalized over the next weeks and months. Based on those oral representations by Perry, several investors purchased Natural Blue stock directly from the company. In fact, there was no factual basis for Perry's claims because Natural Blue had no such contracts or revenues.

14. Perry also told the potential investors that Atlantic Dismantling was merging into Natural Blue and funneling money into Natural Blue. Contrary to Perry's representations, there was no merger between those companies, nor did Atlantic, which itself had chronic cash flow problems, funnel any money into Natural Blue.

15. During the relevant period, as Natural Blue's chief executive officer, Perry signed and authorized the filing of the company's amended Form 10-Q report for the quarterly period ended September 30, 2010 ("Amended 10-Q"). The Amended 10-Q disclosed that, in November 2009, Natural Blue had entered into two agreements with JEC Corp. -- an Engagement and Advisory Fee Agreement to provide services to identify and secure future merger and acquisition opportunities, and an Advisory and Management Fee Agreement to assist Natural Blue in creating and managing a new subsidiary that would pursue business in the steel business. The Amended 10-Q also disclosed that JEC Corp. was owned by one of Natural Blue's shareholders and that the shareholder "is related to our consultants." However, Natural Blue made material omissions in that disclosure that concealed the true role of the JEC Corp. consultants Cohen and Corazzi, as well as their disciplinary histories.

16. Natural Blue's Amended 10-Q failed to disclose that Cohen had been convicted on felony charges and incarcerated several years before his association with Natural Blue and that Corazzi had been sued by the Commission for securities fraud and barred permanently from acting as an officer or director of a public company. Perry was substantially aware of their histories at the time the Amended 10-Q was filed with the Commission. The filing also omitted to disclose that Cohen and Corazzi had created Natural Blue as a private company, orchestrated a reverse merger with a public company, and hand-picked all or most of Natural Blue's officers and directors. The Amended 10-Q also failed to disclose that Cohen and Corazzi caused Natural Blue to enter into the two consulting agreements that enabled them to profit financially from the company regardless of whether it succeeded or not, that they exerted substantial control over the company's operations, strategic decisions, and public statements, and that they engineered a January 2011 agreement between Natural Blue and Atlantic Dismantling (together with Atlantic Acquisitions) that created positive publicity although, ultimately, no financial benefit to Natural Blue.

17. As a result of the conduct described above, Perry willfully violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

18. As a result of the conduct described above, Perry willfully caused violations by Natural Blue, Cohen, and Corazzi of Section 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c), which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent Perry's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Perry cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Perry be, and hereby is:

> barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Respondent shall, within 10 calendar days of the entry of this Order, pay a civil money penalty in the amount of $150,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Erik H. Perry as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street 23rd Floor, Boston, MA 02110-1424.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72635 / July 17, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3877 / July 17, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31159 / July 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15976

In the Matter of

LAKESIDE CAPITAL MANAGEMENT, LLC and DENNIS H. DAUGS, JR.

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Lakeside Capital Management, LLC ("Lakeside") and Dennis H. Daugs, Jr. ("Daugs") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offers, the Commission finds that:

Summary

During 2008 through 2012, Dennis H. Daugs, Jr., the owner and portfolio manager of investment adviser Lakeside Capital Management, LLC, used over $8 million in advisory client assets to conduct undisclosed transactions that fraudulently breached his fiduciary duty.

As an investment adviser, Daugs had a fiduciary duty to disclose material conflicts of interest to his clients and act in their best interest. Daugs breached this duty beginning in 2008 and 2009, when he invested a senior citizen Lakeside client in $3.1 million in personal loans to himself. Daugs used the loans to buy a vacation home and refinance his purchase of a rare automobile, and the loans involved a material conflict of interest between Daugs and the client. Yet Daugs did not disclose the loans to the client until early 2010. Before this disclosure, Daugs paid interest on the loans into the client's brokerage account and likewise paid down part of the loan principal. But the interest rates were low, the loans were unsecured with no set pay-off dates, and the loans were not in the client's best interest. Also, the loans were effected through securities purchases and sales in the client's portfolio without disclosing to her the purpose of those transactions. Shortly after he disclosed the loans to the client, Daugs paid her the balance he owed on them.

Daugs further breached his fiduciary duty through his undisclosed use of assets of a private fund that he managed and whose investors were nearly all Lakeside advisory clients. In early 2010, Daugs diverted $561,000 from the private fund to make settlement payments to several of his clients who had alleged he mismanaged their assets. Daugs later paid the private fund back, but did so without interest. By late 2010, the senior citizen client had threatened to sue Daugs for mismanaging her portfolio. Over the next two years, Daugs arranged for the private fund to spend about $2.5 million to buy the client out of several investments she no longer wanted. Over $2 million of this went to acquire for the private fund investments tied to real estate loans whose borrowers were in default or at risk of defaulting. Daugs' personal stake in the foregoing transactions created a material conflict of interest that he did not disclose to the Lakeside clients who were investors in the private fund. The transactions also disadvantaged the private fund while benefiting Daugs and were not in the best interest of the fund or its investors who were Lakeside clients. In additional conflicted and undisclosed transactions, Daugs directed the private fund to lend out roughly $1.2 million to facilitate his personal purchase and sale of real estate during 2009 and 2010.

Aided and abetted by Daugs, Lakeside also violated compliance and custody rules under the Advisers Act during 2010 through 2012.

Respondents

1. Lakeside Capital Management, LLC ("Lakeside") is a Washington limited liability company formed in 1997 and registered with the Commission as an investment adviser since 2000. It conducts business from an office in Seattle, Washington. During the relevant period, Lakeside had approximately $150 million in assets under management on average and served as investment adviser to about 100 individuals and over thirty private real estate funds.

2. Dennis H. Daugs, Jr. ("Daugs"), age 51, has been Lakeside's sole owner and portfolio manager and its chief compliance officer since January 2010. Before 2010, Daugs co-owned Lakeside with a partner and another individual was chief compliance officer.

Daugs Fraudulently Liquidated Securities and Invested a Client in $3.1 Million in Undisclosed Loans to Himself

3. During the relevant period, Daugs managed a large investment portfolio for a senior citizen Lakeside advisory client ("Client A") and members of her family. As investment advisers, Daugs and Lakeside owed Client A a fiduciary duty to disclose material conflicts of interest to her and act in her best interest.

4. In January 2008, Daugs used $2.15 million from Client A's portfolio to purchase a ski vacation home for himself. To effect this transaction, Daugs caused Lakeside to transfer the $2.15 million from Client A's IRA account at a custodian broker-dealer directly to the escrow account he used to purchase the ski home. A total of $2.15 million in securities were sold from Client A's account to generate the cash transferred to the escrow account.

5. At this time, Lakeside was adviser to Managed Income Opportunities, LLC ("MIO"), a private fund. MIO's investment objective was to acquire securities including debt instruments, either directly or through special purpose entities, and pass on resulting income to its investors. Daugs caused Lakeside to record the $2.15 million cash transfer to the escrow account as Client A purchasing $2.15 million in securities issued by MIO, and MIO then loaning $2.15 million to Daugs. MIO was structured so that each investment it made was funded by a discrete contribution from one or more of its investors, with only the contributing investor(s) receiving a beneficial interest in that investment. Lakeside therefore treated Client A as the sole beneficial investor in a $2.15 million loan from MIO to Daugs.

6. In May 2009, Daugs similarly used assets from Client A's portfolio to refinance his purchase of a rare 1955 Mercedes "Gullwing" automobile. Daugs had purchased the auto in January 2009 and refinanced the purchase in April 2009 through a loan from a different Lakeside client. To pay this client the $950,000 Daugs owed on the loan, Lakeside transferred to the client securities of a private fund (not MIO) owned by Client A and valued at $950,000. Daugs caused

Lakeside to record this as Client A purchasing an additional $950,000 in MIO securities and becoming the sole beneficial investor in a $950,000 loan from MIO to Daugs.

7. The fact that Client A was invested in MIO was shown on IRA account statements and tax forms prepared for her based on information Lakeside provided. But these documents did not disclose to Client A that Daugs had used her MIO investments to make loans to himself to buy a ski home and refinance his auto purchase. Daugs did not otherwise disclose these facts to Client A until early 2010. Also, a written directive in Lakeside's files required that Client A approve any investment of her assets in a private fund like MIO, and Daugs' usual practice was to obtain client approval for investments in private funds. Yet Daugs did not obtain Client A's approval for the investments in MIO he used to buy the ski home and refinance the auto purchase.

8. During 2008 and 2009, Daugs made regular interest payments on the ski home loan (at the prime rate) and on the auto loan (at prime plus two percent) into Client A's IRA account. He also paid down approximately $150,000 in principal on the ski home loan through two payments into the account during 2008. Lakeside kept records of these payments, the loan interest rates, and the loan principal amounts. But Daugs did not execute a promissory note or similar instrument memorializing the terms of either the ski home loan or the auto loan. He also did not execute a deed of trust or any other instrument securing either loan or otherwise provide collateral for the loans. And Daugs did not set any firm date by which he would pay back the loan principal, which totaled $3.1 million.

9. Daugs concealed from Lakeside's chief compliance officer at the time that Daugs had not disclosed to Client A that he used her MIO investments for his ski home and auto.

10. Daugs had a material conflict of interest in using Client A's assets for the ski home and auto. As borrower, Daugs had an interest in loan terms that favored him, such as a low interest rate and no collateral. As the beneficial lender, Client A had interests in a high interest rate and collateral that would allow her to recover her investment if Daugs failed to pay back the loans. Daugs did not disclose this conflict of interests to Client A. Moreover, the loans were not in Client A's best interest. The low interest rates Daugs paid were incommensurate with the risk to Client A presented by the lack of documentation, collateral, and set pay-off dates for the loans. And to effect the loans, MIO securities and other securities were purchased and sold in Client A's portfolio. These transactions were fraudulent because their purpose was neither disclosed to nor approved by Client A.

11. In February 2010, over two years after he took the ski home loan, Daugs first disclosed that loan and the auto loan to Client A. She then terminated Lakeside and Daugs as her advisers. By May 2010, Daugs paid Client A the balance he owed on both the ski home and auto loans. By September 2010, Client A had threatened to sue Daugs and Lakeside for mismanaging her portfolio, and in August 2012, she reached a settlement with Daugs and Lakeside without filing a lawsuit. The settlement, however, did not require Daugs or Lakeside to compensate Client A for the incommensurately low interest rates she had received from Daugs on the ski home and auto loans, and Daugs retained the economic benefit of the low interest rates.

Daugs Used Over $5 Million From the Lending Allocation Fund in Undisclosed Self-Dealing

12. Daugs also made extensive, undisclosed personal use of the assets of Lending Allocation – 2009, LLC ("LAF"), a private real estate fund he managed and for which Lakeside served as adviser. Nearly all of LAF's investors were pre-existing individual advisory clients of Lakeside to whom Daugs and Lakeside owed a fiduciary duty.

13. LAF had approximately $19 million in assets during the relevant period. LAF's purpose was to generate income for its investors by investing its assets in promissory notes secured by real estate or in special purpose entities that owned such promissory notes. During 2009 through 2012, however, Daugs used approximately $5.2 million of LAF's assets: (1) to make cash payments to Client A and other disgruntled Lakeside clients who threatened him with legal action; (2) in a circular transaction through which he returned these payments to LAF; (3) to buy Client A out of investments she no longer wanted; and (4) to facilitate his own purchase and sale of real estate.

14. First, in September 2009, several Lakeside clients threatened legal action against Daugs and Lakeside for mismanaging their assets. In January 2010, Daugs diverted $561,000 from LAF to make settlement payments to these clients. Daugs had the $561,000 transferred from an account of a real estate developer who frequently borrowed from LAF to bank accounts Daugs established and controlled. In return, Daugs treated the $561,000 as a credit against amounts the real estate developer owed LAF. In April 2010, Daugs used another $100,000 from LAF to pay a portion of what he owed Client A on the ski home loan. Daugs provided no collateral for this $100,000 or for the $561,000, and he paid LAF no interest on these amounts (until a belated payment during the Commission staff's investigation).

15. Second, in early 2011, LAF's outside accountants identified the $561,000 and $100,000 transfers while reviewing LAF's books and brought them to Daugs' attention. Daugs then paid the total $661,000 back to LAF in April 2011. He did so, however, using LAF's own cash in a circular transaction. First, Daugs directed LAF to provide an $840,000 loan to the real estate developer. The real estate developer then used that money to pay Daugs $800,000 for an option to purchase a half interest in Daugs' ski home. Daugs then used the same money to pay the $661,000 back to LAF. As part of the deal, Daugs gave the real estate developer the ability to potentially extend the termination date of his $6 million line of credit with LAF.

16. Third, after Daugs entered a tolling agreement with Client A in September 2010, he directed LAF to spend approximately $2.5 million to buy Client A out of several Lakeside investments she no longer wanted. Two of these investments, described below, were distressed because they were tied to real estate loans at risk of non-payment.

a. In December 2010, LAF spent approximately $340,000 to acquire the first distressed investment, Client A's MIO investment in a real estate loan. The borrowers on the loan had a history of making late payments, as Daugs knew, and worse, the borrowers soon defaulted. This left LAF as the investor in a non-performing loan, with the only prospect for recovering its $340,000 being a sale of the property that secured the loan. Moreover, another lender had a claim on the property superior to LAF's, as Daugs knew.

b. In September 2012, Daugs directed LAF to buy the second distressed investment—Client A's investment in yet another private fund that in turn was invested in a promissory note. Daugs and Lakeside's settlement with Client A the month before had obligated Lakeside to find a buyer to pay Client A $1.7 million for this investment, which LAF did, although Client A had paid only $1.1 million for it. And as Daugs knew, the promissory note underlying the Client A investment was in default. Again, LAF became invested in a non-performing asset and could recover its $1.7 million only through a sale of the property that secured the promissory note.

17. Finally, Daugs directed LAF to make two loans totaling approximately $1.2 million to facilitate his personal purchase and sale of a residential rental property. Daugs bought the property in April 2009 using $490,000 he borrowed from LAF as part of the purchase price. In September 2010, Daugs sold the same property to the real estate developer—who borrowed $700,000 from LAF to pay Daugs for the property.

18. Daugs had large personal stakes in effecting the foregoing transactions and also was a principal of Lakeside, the adviser to LAF and nearly all its investors. The transactions therefore involved material conflicts of interest for Daugs. Daugs did not disclose these conflicts of interest or the transactions to Lakeside's advisory clients who were LAF investors.

19. Daugs also did not act in the best interests of LAF or Lakeside advisory clients who were LAF investors. He provided no interest or collateral for the $661,000 he took from LAF and then used to pay disgruntled clients. He returned the money only after the outside accountants discovered it was missing, doing so with a transaction that used LAF's own cash and exposed LAF to additional credit risk but provided it no offsetting benefit. And when Daugs directed LAF to acquire the distressed Client A investments, he put LAF at a disadvantage while advancing his own interests.

20. At times during the relevant period, the Lakeside clients who invested in LAF paid management fees to Lakeside based on their assets invested in LAF. At other times, LAF paid a management fee to an entity owned and controlled by Daugs that was designated LAF's manager under its limited liability company structure. These fees were based in part on the LAF assets described above that consisted of loans made to Daugs or for his benefit and investments LAF acquired at Daugs' direction in conflicted transactions.

Lakeside Had an Inadequate Compliance Manual

21. Rule 206(4)-7 under the Advisers Act requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Act and rules thereunder.

22. During 2010 through 2012, Lakeside's compliance manual did not include policies and procedures specific to the firm's extensive engagement in managing private funds. In particular, the manual lacked provisions reasonably designed to prevent violations of the Advisers Act arising from failures to disclose material conflicts of interest or act in the best interest of clients in connection with related-party transactions involving the private funds.

23. During 2010 through 2012, Daugs was Lakeside's sole owner and portfolio manager and its chief compliance officer and responsible for Lakeside's compliance with Rule 206(4)-7.

Lakeside Violated the Custody Rule

24. Rule 206(4)-2 under the Advisers Act, commonly known as the "Custody Rule," requires registered investment advisers with custody of client funds or securities to implement certain controls designed to protect those client assets from loss, misappropriation, misuse, or the adviser's insolvency.

25. Under the Custody Rule, Lakeside was required to maintain client funds and securities at a qualified custodian in a separate account for each client under that client's name, or in accounts that contained only clients' funds and securities under Lakeside's name as agent or trustee for the clients. During 2010 through at least 2012, however, Lakeside routinely held cash belonging to its various private fund clients in three bank accounts established in the name of law firms employed by Lakeside.

26. An adviser to a pooled investment vehicle relying on the audit approach found in Rule 206(4)-2(b)(4) must distribute audited financial statements for the pool to the pool's investors within 120 days after the pool's fiscal year end (or 180 days for funds of funds). For audit years 2010 and 2011, Lakeside relied on the audit approach and frequently failed to deliver audited financial statements for the private funds (i.e., pooled investment vehicles) it advised by the required deadlines.

27. During 2010 through 2012, Daugs was Lakeside's sole owner and portfolio manager and its chief compliance officer and responsible for Lakeside's compliance with the Custody Rule.

Violations

28. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

29. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

30. As a result of the conduct described above, Lakeside willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder, and Daugs willfully aided and abetted and caused Lakeside's violations of these provisions.

Undertakings

Lakeside has undertaken as follows:

31. Lakeside shall not solicit or accept new investments, including but not limited to capital contributions to private funds, from its clients or others, and Lakeside shall not solicit or accept new clients.

32. Lakeside shall continue the process of winding down its operations begun before the entry of this Order. Within thirty (30) days of entry of this Order, Lakeside shall engage, at its own expense, an independent monitor ("Monitor") who is not unacceptable to the Commission staff, to:

i. oversee the completion of the winding down of Lakeside's operations;

ii. submit to the Commission staff, by sixty (60) days after the entry of this Order (or by such later date as the staff may approve) a report on the wind-down activities conducted by Lakeside before the Monitor was engaged;

iii. starting thirty (30) days after the Monitor is engaged, submit to the Commission staff monthly reports describing the status of the wind-down and the status of all assets of Lakeside clients; and

iv. report any potential irregularities or misconduct involving Lakeside to the Commission staff on an ongoing basis.

33. Lakeside shall fully cooperate with the Monitor and provide the Monitor with access to any and all accounting and financial records and other documents and information the Monitor may request for review in the course of his/her/its duties.

34. Where practicable, Lakeside shall provide the Monitor with five (5) days advance notice of all transactions involving more than $10,000 of Lakeside client assets; and for transactions where such notice is not practicable, Lakeside shall provide the Monitor with notice of the completed transaction within two (2) business days after completion.

35. Lakeside shall retain the Monitor from the date of the engagement of the Monitor until six (6) months from the entry of this Order, or until such earlier date when Lakeside has ceased operations.

36. Lakeside shall require the Monitor to enter into an agreement which provides that for the period of engagement and for a period of two (2) years from completion of the

engagement, the Monitor shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Lakeside, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Monitor will require that any firm with which he/she/it is affiliated or of which he/she/it is a member, and any person engaged to assist the Monitor in performance of his/her/its duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Lakeside, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

37. Within thirty (30) days of entry of this Order, Lakeside shall confirm in writing to the Commission staff that the payments to Lending Allocation – 2009, LLC and Client A ordered in Section IV.E below have been made. Lakeside shall be responsible for any and all tax compliance obligations associated with the payments ordered in Section IV.E and may obtain professional services as necessary or appropriate to satisfy such obligations. The costs and expenses of such professional services or otherwise satisfying tax compliance obligations shall be borne by Lakeside and shall not be deducted from the payments ordered in Section IV.E.

38. Within thirty (30) days of the entry of this Order, Lakeside shall provide a copy of the Order to each of its advisory clients, and to each investor in Lending Allocation – 2009, LLC who is not an advisory client, by mail or email.

39. Lakeside shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Lakeside agrees to provide such evidence. The certification and supporting material shall be submitted to Tracy L. Davis, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

B. Daugs be, and hereby is:

(i) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

(ii) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Daugs will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Daugs, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. As an exception to Section IV.B above, for a period of six (6) months from the entry of this Order, Daugs may continue to associate with Lakeside and its affiliates solely for the purpose of winding down Lakeside's operations with oversight from the Monitor as provided in Sections III.32 through III.36 above.

E. Respondents shall pay disgorgement of $302,451 and prejudgment interest of $37,701, for which Respondents are jointly and severally liable, to the Securities and Exchange Commission. In satisfaction of Respondents' obligation to pay disgorgement and prejudgment interest, Respondents shall, within ten (10) days of the entry of this Order, pay $72,138 to Lending Allocation – 2009, LLC, and pay $268,014 to Client A. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

F. Respondents shall, within ten (10) days of the entry of this Order, pay a civil money penalty of $250,000, for which Respondents are jointly and severally liable, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lakeside and Daugs as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tracy L. Davis, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

G. Respondents are censured.

H. Lakeside shall comply with the undertakings enumerated in Sections III.31 through III.39 above.

By the Commission.

Jill M. Peterson
Assistant Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 17, 2014

In the Matter of **Cubed, Inc.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Cubed, Inc. ("Cubed"), particularly with respect to the company's current financial condition. Cubed is a Nevada corporation with its principal place of business located in Las Vegas, Nevada. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: CRPT. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Cubed.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 17, 2014, through 11:59 p.m. EDT on July 30, 2014.

By the Commission.

Jill M. Peterson
Assistant Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 18, 2014

In the Matter of **mBeach Software, Inc.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

mBeach Software, Inc. (CIK No. 1465856) is a Florida corporation located in Tel Aviv, Israel with a class of securities registered with the Securities and Exchange Commission ("Commission") pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). mBeach Software, Inc. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of $118,018 for the prior nine months. As of June 30, 2014, the company's stock (symbol "MBHS") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc., had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of mBeach Software, Inc. because it has not filed any periodic reports since its Form 10-Q for the period ended September 30, 2010. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of mBeach Software, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Exchange Act, that trading in the securities of mBeach Software, Inc. is suspended for the period from 9:30 a.m. EDT on July 18, 2014, through 11:59 p.m. EDT on July 31, 2014.

By the Commission.

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72648 / July 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15979

In the Matter of **mBeach Software, Inc.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent mBeach Software, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent mBeach Software, Inc. (CIK No. 1465856) is a Florida corporation located in Tel Aviv, Israel with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Respondent is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of $118,018 for the prior nine months. As of June 30, 2014, Respondent's stock (symbol "MBHS") was quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc., had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports, and failed to heed a delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

4. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of, each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of Respondent.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of Respondent, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Assistant Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

Commissioner Aguilar
Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72653 / July 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15980

In the Matter of **BERNARD H. BUTTS, JR., ESQ.,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e)(3) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(3) of the Commission's Rules of Practice[1] against Bernard H. Butts, Jr. ("Butts" or "Respondent").

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Rule 102(e)(3) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Bernard H. Butts, Jr., age 72, is an attorney licensed to practice law in the State of Florida since 1967.

2. On August 29, 2013, the Commission filed a complaint against Butts in SEC v. Bernard H. Butts, Jr., et al. (S.D. Fla. Civil Action No. 1:13-cv-23115-JEM). On July 10, 2014, the court entered an order permanently enjoining Butts, by consent, from future violations of Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 5 and 17(a) of the Securities Act. Butts was also ordered jointly and severally to pay $1,791,608 in disgorgement of ill-gotten gains from his conduct alleged in the complaint, and $100,803.81 in prejudgment interest; and a $2,059,264.19 civil money penalty.

3. The Commission's complaint alleged, among other things, that from April 2012 through August 2013, Butts and others obtained millions of dollars by defrauding investors through the offer and sale of investments in a fictitious prime bank instrument trading program. The complaint also alleged Butts and others told investors that an investment of between USD $60,000 and $90,000 would generate profits of at least €6,660,000 (Euros) within 15 to 45 business days and continue to earn profits of approximately 14% per week for 40 to 42 weeks. In addition, the complaint alleged that Butts falsely promised that when an investor's funds were deposited into his attorney trust account, he would not release the funds until he received proof from the receiving bank that a €10,000,000 Standby Letter of Credit ("SBLC") had been deposited into a securities trading program which was to generate profits for investors. Further, the complaint alleged the defendants did not disclose that instead of using the funds to obtain SBLCs, they misappropriated investors' funds with Butts and another defendant each taking approximately 45% of the investors' funds and paying approximately 10% to sales agents. The complaint also alleged that contrary to the defendants' representations, the acquisition of the SBLCs never occurred, no loans were obtained, and no promised returns were earned in a trading program or paid to investors. Furthermore, the

complaint alleged that over more than a year, the defendants obtained at least $3.5 million from approximately forty-five investors nationwide and in foreign countries by making false and misleading statements or omitting material facts in the offer and sale of these unregistered securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Butts' Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Butts is suspended from appearing or practicing before the Commission as an attorney; and

B. Butts is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 72652 / July 22, 2014

WHISTLEBLOWER AWARD PROCEEDING

File No. 2014-6

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On April 7, 2014, the Claims Review Staff issued a Preliminary Determination related to Notice of Covered Action Redacted (the "Covered Action"). The Preliminary Determination recommended that Claimant #1 , Claimant #2 , and Claimant #3 Claimant #3 each receive a whistleblower award because they voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a). Further, the Claims Review Staff recommended that such award be set in the amount of thirty percent (30%) in total, with fifteen percent (15%) to Claimant #1, ten percent (10%) to Claimant #2 , and five percent (5%) to Claimant #3 of the monetary sanctions collected or to be collected in the Covered Action. In arriving at this recommendation, the Claims Review Staff considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimant #1 , Claimant #2 and Claimant #3 applications.

On April 21, 2014 and April 28, 2014, Claimant #2 and Claimant #3 respectively, provided written notice to the Commission of their decisions not to contest the Preliminary Determination within the 60-day deadline set out in Rule 21F-10(e) promulgated under the Exchange Act, 17 C.F.R. § 240.21F-10(e). Claimant #1 failed to submit a timely response contesting the Preliminary Determination. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination became the Proposed Final Determination of the Claims Review Staff.

Upon due consideration under Rule 21F-10(f) and (h), 17 C.F.R. § 240.21F-10(f) and (h), and for the reasons set forth in the Preliminary Determination, it is hereby ORDERED that Claimant #1 shall receive fifteen percent (15%), Claimant #2 shall receive ten percent (10%), and Claimant #3 shall receive five percent (5%), respectively, for a total of thirty percent (30%), of the monetary sanctions collected in this Covered Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Commissioner Aguilar
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3880 / July 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15981

In the Matter of JOHN VINCENT GRECO, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John Vincent Greco ("Greco" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Greco is a resident of Darien, Connecticut. From approximately August 2009 to December 2011, Greco served as the President of DFS Capital Management, LP ("DFS"). DFS was registered under the Connecticut Uniform Securities Act as an investment adviser from August 6, 2009 to December 31, 2011, when it failed to renew its registration.

2. On May 1, 2013, Greco consented to an order issued by the Connecticut Department of Banking in In the Matter of DFS Capital Management, LP, John Vincent Greco, and DFS Fund, LP., No. CO-12-8048-S. The order barred Greco for ten years from the securities and investment adviser business in Connecticut.

3. The order alleged that Greco transacted business as an unregistered investment adviser agent of DFS by providing investment advice regarding securities to DFS Fund, LP, DFS' investment advisory client, for compensation even though Greco was not registered as an investment adviser agent under the Connecticut Uniform Securities Act; Greco made misrepresentations and omissions regarding DFS Fund to at least two investors, and two investors in DFS Fund each incurred more than $100,000 in trading losses. The order also alleged that Greco made a false or misleading statement to the Connecticut Department of Banking during its investigation. The order stated that Greco violated Sections 36b-4(a), 36b-4(b), 36b-6(c)(2), and 36b-23 of the Connecticut Uniform Securities Act. On July 25, 2013, the Connecticut Department of Banking found that Greco violated the terms of the order by failing to repay one investor pursuant to the terms of the order and that, as a result, the allegations were deemed admitted by Greco.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Greco's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Greco be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization

with the right to apply for reentry after ten years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization or any state securities commission (or any agency or officer performing like functions), whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72659 / July 23, 2014

WHISTLEBLOWER AWARD PROCEEDING
File No. 2014-7

In the Matter of the Claim for Awards

in connection with

Redacted

and

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

Redacted ("Claimant") failed to submit Redacted claims for an award for Notices of Covered Action Redacted and Redacted to the Office of the Whistleblower ("OWB") within ninety (90) calendar days of the date of the respective Notices of Covered Action as required by Rule 21F-10(b) under the Securities Exchange Act of 1934 ("Exchange Act") to be considered for an award. Claimant also did not demonstrate "extraordinary circumstances," as required by Rule 21F-8(a) under the Exchange Act, to justify the waiver of the ninety (90) day requirement. For the foregoing reasons, the Claims Review Staff ("CRS") issued a Preliminary Determination recommending that Claimant's claims for an award be denied. Claimant now has filed a response contesting the Preliminary Determination.

For the reasons set forth below, Claimant's claims are denied.

I. Commission Enforcement Actions and Notices of Covered Action

A. The Commission's Enforcement Actions

i. Redacted

On Redacted the Commission filed a complaint in the U.S. District Court Redacted against Redacted Redacted ("the Redacted Matter"). On Redacted Redacted the district court entered a final judgment in favor of the Commission. Among other relief, the district court ordered Redacted to pay disgorgement of Redacted together with prejudgment interest of Redacted, amounting to Redacted, plus Redacted in civil penalties.

ii. Redacted

On Redacted the Commission filed a complaint against Redacted Redacted Redacted ("the Redacted Matter"). On Redacted the district court entered final judgments in favor of the Commission. Among other relief, the district court ordered Redacted jointly and severally liable for disgorgement in the amount of Redacted together with prejudgment interest of Redacted for a total of Redacted and ordered Redacted to pay a civil penalty of Redacted

B. Notices of Covered Action

The OWB posted Notices of Covered Action (each, a "NoCA") on Redacted for both the Redacted Matter, NoCA Redacted and the Redacted Matter, Redacted Redacted on the Commission's website pursuant to Rule 21F-10(a) under the Exchange Act. Each NoCA listed Redacted ninety (90) calendar days from the date of posting, as the deadline for submitting claims.[1]

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1 Rule 21F-10 outlines the procedures for making a claim for a whistleblower award in Commission actions that result in monetary sanctions in excess of $1,000,000. 17 C.F.R. § 240.21F-10. Section (b) of 21F-10 imposes specific timing requirements upon the whistleblower to make an award claim:

> To file a claim for a whistleblower award, you must file Form WB-APP, *Application for Award for Original Information Provided Pursuant to Section 21F of the Securities Exchange Act of 1934* (referenced in § 249.1801 of this chapter). You must sign this form as the claimant and submit it to the Office of

C. Claimant's Applications for Award

Claimant submitted whistleblower award applications for both matters. Claimant's Redacted and Redacted award applications were received by the OWB on Redacted and Redacted respectively—nearly three months past the Redacted Redacteddeadline.

On Redacted Claimant submitted a letter to the OWB explaining that neither Redacted nor Redacted attorney knew about the NoCA postings on the Commission's website, which resulted in Claimant's delay in submitting the applications.

II. Claimant's Claims are Denied

A. Background

Claimant submitted information to the Commission about suspected wrongdoing in the Redacted Matter and Redacted Matter in or about Redacted and Redacted For instance, Claimant contacted the Redacted on or about Redacted Redacted with information regarding wrongdoing by Redacted with respect to the stock of Redacted . Similarly, on or about Redacted , the Claimant provided the Commission with a transcript of testimony that Redacted had given in Redacted the Claimant believed that Redacted had described Redacted in Redacted testimony. According to the Enforcement attorneys involved in the Redacted and Redacted Matters, Claimant (prior to final judgments being entered) did not provide any additional information following the effective date of the whistleblower program—*i.e.*, July 21, 2010 when the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") was enacted.

B. The Preliminary Determination

On December 19, 2012, the CRS made a Preliminary Determination recommending that Claimant's award applications be denied. The Preliminary Determination explained that the Claimant had failed to provide the OWB with the award application for either NoCA within ninety (90) calendar days of the date of the respective NoCA as required by Rule 21F-10(b) of the Exchange Act to be considered for an award. The Preliminary Determination also stated that the Claimant had not demonstrated "extraordinary circumstances" to justify the waiver of the ninety (90) day requirement pursuant to Rule 21F-8(a). 17 C.F.R. § 240.21F-8(a).

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the Whistleblower by mail or fax. All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

C. Claimant's Response to the Preliminary Determination

On February 19, 2013, Claimant submitted a written response contesting the Preliminary Determination pursuant to Rule 21F-10(e)(2). 17 C.F.R. § 240.21F-10(e)(2). Rule 21F-10(e)(2) provides that a claimant seeking to contest a Preliminary Determination may submit a written response within sixty (60) days that "sets forth the grounds for your objection to either the denial of an award or the proposed amount of an award."

In Redacted response, Claimant does not dispute that Redacted WB-APPs were untimely. Instead, Claimant attempts to demonstrate the presence of extraordinary circumstances that caused the late-filed WB-APPs. Claimant's response centers on one critical argument— Redacted was not aware of the whistleblower award program prior to the expiration of the 90-day filing deadline. Claimant further argues that Redacted lack of knowledge was due to the failure of the Commission to provide Redacted with actual notice of the program and its filing requirements, and Redacted attorney's failure to learn of the program and timely submit the award applications.

D. Analysis

Rule 21F-10(a) specifically states that "[a] claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred." As the Commission explained when it adopted this rule, "The 90-day bar provides finality at the end of a reasonable application period so that we may assess the award applications and conclusively determine which applicant, if any, is entitled to an award, and in what percentage amount." *Securities Whistleblower Incentives and Protections*, Rel. No. 34-64545, n. 351 (May 25, 2011). But "…the Commission may, in its sole discretion, waive" the 90-day bar "based upon a showing of extraordinary circumstances." 17 C.F.R. § 240.21F-8(a). Claimant asks that we do so, but we find that Redacted application does not warrant such equitable relief.

In determining whether a claimant has demonstrated extraordinary circumstances to excuse an untimely submission under Rule 21F-8, we look to our analogous decision in *In the Matter of the Application of PennMont Securities et al.*, SEC Release No. 34-61967, 2010 WL 1638720 (April 23, 2010) (hereinafter "*PennMont*"), *aff'd* 414 Fed. Appx. 465 (3d Cir. 2011). There, in determining whether extraordinary circumstances were shown to permit an untimely filing under Commission Rule of Practice 420(b), 17 C.F.R. § 201.420(b), we explained that "the 'extraordinary circumstances' exception is to be narrowly construed and applied only in limited circumstances." *PennMont*, 2010 WL 1638720 at *4. After examining analogous areas of federal law, we determined that demonstration of an extraordinary circumstance in the context of an untimely submission requires a person seeking relief to show that "the reason for the failure to timely file was beyond [his or her] control[.]" *Id.*

As explained above, Claimant asserts that extraordinary circumstances exist here to justify Redacted untimely filing because Redacted did not know of the whistleblower program until after the expiration of the 90-day filing period. But a lack of awareness about the program does not, in our view, rise to the level of an extraordinary circumstance as a general matter. Claimants have it well within their control to learn about the whistleblower program's existence and its requirements, and to file a timely award application; they simply need to visit the Commission's web page, which prominently features the relevant information about the program. Their failure to do so does not warrant equitable relief, particularly since a central premise underlying Rule 21F-10(a)(1) is that potential claimants bear the ultimate responsibility to learn about the program and to take the appropriate steps to perfect their award applications.

We are similarly unpersuaded by Claimant's attempt to shift responsibility for Redacted lack of knowledge about the whistleblower program to the Commission and to Redacted attorney. The Commission is under no duty to provide Claimant (or Redacted attorney) with direct notice of the filing deadline—and Claimant has failed to suggest any legal authority suggesting otherwise.[2] Again, the NoCAs are clearly posted on the Commission's website, each with a definite filing deadline, which constitutes sufficient notice.

Nor are we persuaded by Claimant's contention that we should forgive Redacted untimeliness because Redacted attorney did not discover the whistleblower program's existence and, thus, advise Redacted about it, until after the expiration of the 90-day

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[2] We note Claimant has not asserted that due process requires that Redacted receive actual notice of the whistleblower award program's existence and, thus, any such argument is waived. But it would fail in any event. Congress enacted the program through legislation, the Commission published the rules implementing the program in the Federal Register, and those rules are available to the public in the Code of Federal Regulations. For due process purposes, this more than sufficed to provide Claimant with notice that the program exists. *Cf. Luna v. Holder*, 659 F.3d 753, 759 (9th Cir. 2011) (finding that all aliens presumptively have been given notice of a deadline to file a motion to reopen where the law has been enacted by Congress and the regulation has been published in the Federal Register); *Stearn v. Dep't of Navy*, 280 F.3d 1376, 1384 (Fed. Cir. 2002) (finding that government employees claiming certain retirement benefits were placed on notice of the requirements for obtaining those benefits by publication of the governing regulation in the Federal Register); *LaChance v. Reno*, 13 F.3d 586, 589-90 (2d Cir. 1994) (explaining that the publication of an administrative regulation provides constructive notice); *Jordan v. Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor*, 892 F.2d 482, 488-89 (6th Cir. 1989) (holding that a party "received constructive notice of her right to obtain an attorney at no charge by virtue of the publication of [the regulation] in the Federal Register and the Code of Federal Regulations").

submission period. To be sure, as we observed in *PennMont*, attorney misconduct in some circumstances might give rise to extraordinary circumstances justifying equitable relief. *PennMont*, 2010 WL 1638720 at *4. But the requisite level of attorney misconduct causing the untimely submission must be severe, involving blatant client deception, outright abandonment, or similar egregious misconduct; ordinary negligence such as Claimant's attorney here may be responsible for will not suffice.[3] And because Claimant has failed to offer anything that exhibits the requisite level of egregious attorney misconduct, we find that any failure on Redacted attorney's part does not constitute an extraordinary circumstance necessary to trigger our discretion to toll the 90-day filing deadline.[4]

But the Claimant's request that we exercise our equitable tolling authority fails for an additional reason— Redacted failed to act promptly upon learning of the missed filing deadline. As we explained in *PennMont*, "[e]ven when circumstances beyond the applicant's

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3 *See, e.g., Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (explaining that an attorney's ordinary negligence is generally not an "extraordinary circumstance" warranting equitable tolling); *Holland v. Florida*, 130 S. Ct. 2549, 2564 (2010) ("[A] garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does not warrant equitable tolling.") (internal citations omitted). *See also Geraci v. Senkowski*, 211 F.3d 6, 9 (2d Cir. 2000) (finding a mistake by counsel as to the calculation of time remaining to file a petition did not constitute extraordinary circumstances); *Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001) (finding that ordinary attorney negligence, such as miscalculating a deadline, is not an extraordinary circumstance that warrants equitable tolling); *Toccaline v. Commissioner*, 2012 WL 603294, at *10 (No. 3:10-cv-1404) (D. Conn. Feb. 23, 2012) (finding that petitioner's ignorance of the law did not constitute an extraordinary circumstance to warrant equitable tolling); *McCaskill, II v. Dep't of the Army*, 2006 WL 314555, at *7 (No. 1:05-CV-536) (M.D.N.C. Feb. 8, 2006) (finding that missing a 90-day deadline to file—or failing to inform a client to file—is "garden-variety" ordinary negligence). *Cf. Martinez v. City of Chicago*, 2 F.3d 752, 756 (7th Cir. 2007) (explaining that even though the plaintiff's attorney's neglect resulted in the dismissal of what may have been a meritorious action, the plaintiff's attorney serves as the plaintiff's agent, and the plaintiff is thus bound by his actions).

4 In other contexts, recent cases finding extraordinary circumstances have generally involved attorney abandonment of clients without notification or similar egregious attorney misconduct. *See, e.g., United States v. Martin*, 408 F.3d 1089, 1096 (8th Cir. 2005) (client entitled to equitable tolling where his attorney retained files, made misleading statements, and engaged in similar conduct); *Dillon v. Conway*, 642 F.3d 358, 362-64 (2d Cir. 2011) (attorney willfully misled his client); *Walden v. Link Systems, Inc.*, 2012 WL 3779210, at *2 (No. 1:11–cv–0388) (S.D. Ind. Aug. 9, 2012) (attorney "walked away from her clients and her law practice at some point without giving any notice to her clients.").

control give rise to the delay, … an applicant must also demonstrate that he or she promptly arranged for the filing … as soon as reasonably practicable thereafter." *Id.* at *4. Indeed, we admonished that "[a]n applicant whose application is delayed as a result of extraordinary circumstances remains under an obligation to proceed promptly" thereafter in making his submission. *Id.*

In Redacted response to the Preliminary Determination, Claimant states that Redacted "did not sit on Redacted rights" after learning about the program. Claimant's Response to the Preliminary Determination, at 1; *see also id.* at 2 ("Once the information was found, we applied immediately."). But the record leads us to conclude otherwise. In a Redacted letter, the Claimant represented that Redacted attorney became aware of the whistleblower program in late Redacted yet Claimant's award applications were not received by the OWB until Redacted and Redacted, respectively. Given the relatively straightforward nature of the WB-APPs that Claimant submitted, we fail to see why Redacted delayed over a month in submitting them. Nor has Claimant offered any credible explanation for the delay.[5] Accordingly, we find that Claimant failed to demonstrate that Redacted pursued Redacted rights diligently upon learning that the whistleblower program existed.

For these reasons, we conclude that Claimant has not met the heavy burden of demonstrating that extraordinary circumstances prevented Redacted from timely submitting to the OWB Redacted award applications for NoCAs Redacted and Redacted.[6]

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[5] In a letter to the OWB Redacted Claimant asserted that Redacted delayed submitting the Redacted application to avoid jeopardizing a purportedly then-pending non-public criminal investigation. But we do not credit this explanation because: (i) we fail to understand why Redacted felt this was necessary given that the Commission does not make whistleblower applications publicly available, and (ii) if Claimant had in fact had this concern it seems to us the appropriate course would have been to promptly alert the OWB and to seek its guidance rather than to simply unilaterally delay filing the application. In any event, none of this explains Claimant's delay in submitting the earlier Redacted award application.

[6] We note that, based on the record currently before us, Claimant would not be entitled to an award even if Redacted had demonstrated that "extraordinary circumstances" prevented Redacted timely filing of the award applications. It appears that, with one exception discussed below, the information that Claimant provided to the Commission relating to the Redacted and Redacted Matters was provided *before* the July 21, 2010 enactment of Dodd-Frank. Under Rule 21F-4(b)(1)(iv), information provided to the Commission for the first time before Dodd-Frank's enactment is not considered "original information" and, thus, cannot serve as the basis for an award. 17 C.F.R. § 240.21F-4(b)(1)(iv). On or about Redacted Claimant submitted to the Commission a copy of Redacted testimony from a criminal sentencing hearing, but this information could not have contributed to the successful resolution

III. Conclusion

Accordingly, upon due consideration under Rule 21F-10(h), 17 C.F.R. § 240.21F-10(h), it is hereby ORDERED that Redacted whistleblower award claims be, and hereby are, denied.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

of either the Redacted or Redacted Matters because final judgments had already been entered in those cases on Redacted and Redacted respectively.

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-72658; File No. S7-08-14

July 23, 2014

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

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Exemptive Order; Request for Comment.

SUMMARY: Pursuant to Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-10(f), the Securities and Exchange Commission ("SEC" or "Commission") is proposing to grant exemptive relief, subject to certain conditions, from the immediate confirmation delivery requirements of Exchange Act Rule 10b-10 for transactions effected in shares of any open-end management investment company registered under the Investment Company Act of 1940 ("Investment Company Act") that holds itself out as a money market fund operating in accordance with Rule 2a-7(c)(1)(ii) of the Investment Company Act.

DATES: Comments must be received on or before [insert date 21 days after the date of publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-08-14 on the subject line; or
- Use the Federal Rulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-08-14. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec/gov/rules/other.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without charge; the Commission does not edit personal identifying information from submissions. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Natasha Vij Greiner, Branch Chief, Jonathan C. Shapiro, Attorney-Adviser, George Makris, Attorney-Adviser, at 202-551-5550, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

I. Background

Exchange Act Rule 10b-10 addresses broker-dealers' obligations to confirm their customers' securities transactions.[1] Under Rule 10b-10(a), a broker-dealer generally must provide customers with information relating to their investment decisions at or before the completion of a securities transaction.[2] Rule 10b-10(b), however, provides an exception for

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1 17 CFR 240.10b-10.

2 17 CFR 240.10b-10(a).

certain transactions in money market funds that attempt to maintain a stable net asset value ("NAV") and where no sales load or redemption fee is charged.[3] The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly basis (subject to certain conditions set forth in Rule 10b-10(b)(2) and (3)) in lieu of immediate confirmations for all purchases and redemptions of shares of such funds.[4] Accordingly, customers historically have received information for their transactions in shares of money market funds on a monthly basis.

Today, the Commission adopted amendments to Rule 2a-7 of the Investment Company Act. Among other things, the amendments require institutional prime money market funds, which, under the prior rule, were permitted to maintain a stable net asset value, to sell and redeem shares based on the current market-based value of the securities held in their portfolios, *i.e.*, transact at a "floating" NAV.[5] As a result, institutional prime money market funds, like other mutual funds, will now be required to value their portfolio securities using market-based factors (rather than amortized cost) and sell and redeem shares at prices rounded to the fourth

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[3] 17 CFR 240.10b-10(b).

[4] 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. 17 CFR 240.10b-10(b)(2). Exchange Act Rule 10b-10(b)(3) requires that such customer is 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).

[5] *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, at section III.B (July 23, 2014) ("Money Market Fund Reform Adopting Release").

decimal place (rather than rounded to the nearest penny).[6] However, institutional prime money market funds will continue to be subject to the "risk limiting" provisions of Rule 2a-7 and therefore will continue to be limited to investing in short-term, high-quality, dollar-denominated instruments.[7]

Given that share prices of such institutional prime money market funds likely will fluctuate under the amended rule, absent exemptive relief, broker-dealers will not be able to continue to rely on the current exception under Rule 10b-10(b) for transactions in money market funds operating in accordance with Rule 2a-7(c)(1)(ii).[8] Instead, broker-dealers will be required to provide immediate confirmations for all such transactions.

In the money market fund reform proposing release,[9] the Commission requested comment on whether, if the Commission adopted the floating NAV requirement, broker-dealers should be required to provide immediate confirmations to all institutional prime money market fund investors. Commenters generally urged the Commission not to impose such a requirement, arguing that there would be significant costs associated with broker-dealers providing immediate

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6 *Id.*; Investment Company Act Rule 2a-7(c)(1)(ii), 17 CFR 270.2a-7(c)(1)(ii).

7 Money Market Fund Reform Adopting Release, at 143; *see also* Investment Company Act Rule 2a-7(d), 17 CFR 270.2a-7(d) (risk-limiting conditions).

8 *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 net asset value).

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, at sections III.C.1 and III.C.2. Accordingly, for investor transactions in such exempt funds, broker-dealers would continue to qualify under the exception under Rule 10b-10 and be permitted to send monthly transaction reports.

9 Money Market Fund Reform; Amendments to Form PF, 78 FR 36934.

confirmations.[10] Such costs are expected to include both (1) the ongoing costs of creating and sending trade-by-trade confirmations and (2) the costs of implementing new systems to generate confirmations.[11] The Commission recognizes that there may be costs associated with requiring immediate confirmations for such transactions,[12] and is aware that such costs may be passed on to investors in funds subject to the floating NAV requirements.[13] Nonetheless, given that institutional prime money market funds likely will fluctuate in price, some investors may find value in receiving information relating to their investment decisions at or before the completion of a securities transaction. The Commission requests comments regarding these potential benefits.

II. Discussion of Proposed Relief

After careful consideration, the Commission is proposing to grant exemptive relief pursuant to Section 36 of the Exchange Act[14] and Exchange Act Rule 10b-10(f)[15] that would

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10 *See* Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated September 17, 2013 ("Investment Company Institute Letter"), at 37, *available at* http://www.sec.gov/comments/s7-03-13/s70313-200.pdf; Letter from Timothy W. Cameron, Managing Director, SIFMA Asset Management Group, John Maurello, Managing Director, SIFMA Private Client Group, Matthew J. Nevins, Managing Director and Associate General Counsel, SIFMA Asset Management Group, dated Sept. 17, 2013 ("9/17/13 SIFMA Letter"), at Appendices 1 and 2, *available at* http://www.sec.gov/comments/s7-03-13/s70313-199.pdf; Letter from J. Charles Cardona, President, The Dreyfus Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated September 17, 2013 ("Dreyfus Letter"), at 35, *available at* http://www.sec.gov/comments/s7-03-13/s70313-167.pdf; Letter from John D. Hawke, Jr., Arnold & Porter, on behalf of Federated Investors, Inc. and its subsidiaries, to Chair Mary Jo White, Commission, dated September 17, 2013 ("Federated Letter"), at 22, *available at* http://www.sec.gov/comments/s7-03-13/s70313-225.pdf; Letter from Anthony J. Carfang, Partner, Cathryn R. Gregg, Partner, Paul LaRock, Principal, Steven Wiley, Manager, Treasury Strategies, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2013 ("Treasury Strategies Letter"), *available at* http://www.sec.gov/comments/s7-03-13/s70313-118.pdf.

11 *See, e.g.*, Federated Letter, at 22.

12 Money Market Fund Reform Adopting Release, at section III.B.7.

13 *See, e.g.*, Dreyfus Letter, at 35 ("Confirming transactions in [variable net asset value money market mutual funds] on a transaction basis will increase costs, which will be passed on to [money market mutual fund] investors or underwriters.").

14 Section 36 of the Exchange Act 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

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.

The floating NAV requirement, as adopted, only applies to institutional prime money market funds – not to government or retail money market funds.[16] Shareholders that invest in institutional prime money market funds will continue to have extensive investor protections separate and apart from the protections provided under Exchange Act Rule 10b-10. For example, as stated above, funds subject to the floating NAV requirement will continue to be subject to the "risk limiting" conditions of Rule 2a-7.[17] These conditions limit the risk in a money market fund's portfolio by governing the credit quality, liquidity, diversification, and maturity of money market investments. Accordingly, 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]

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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.

15 Exchange Act Rule 10b-10(f) specifies the Commission may conditionally or unconditionally exempt any broker or dealer from the requirements of Rule 10b-10(a) and Rule 10b-10(b) 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).

16 *See* Investment Company Act Rule 2a-7(c)(1)(ii), 17 CFR 270.2a-7(c)(1)(ii). As defined in Investment Company Act Rule 2a-7(a)(25), as amended, a retail money market fund is defined as a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons. 17 CFR 270.2a-7(a)(25). Under Rule 2a-7(a)(16), a government money market fund is defined as a money market fund that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully. 17 CFR 270.2a-7(a)(16).

17 *See* 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, at 143.

While institutional prime money market fund shares will fluctuate, they are not likely to fluctuate daily, primarily due to the high quality and short duration of such funds' underlying portfolio securities.[19] In addition, the Commission anticipates that information on prices will be available through other means.[20] For example, under the new fund disclosure requirements of Investment Company Act Rule 2a-7(h)(10)(iii), investors – including institutional investors – will be able to access a fund's daily mark-to-market NAV per share on a money market fund's website.[21] Moreover, as previously noted, commenters raised concerns about the costs associated with requiring immediate confirmation for such transactions, which, to some extent, may be passed on to investors.[22]

Under Exchange Act Rule 10b-10(b), the exemption from providing immediate confirmations consistent with the written notification requirements under Rule 10b-10(a) is subject to certain conditions.[23] The Commission preliminarily believes that these conditions are also appropriate for institutional prime money market funds subject to the floating NAV requirement under Rule 2a-7(c)(1)(ii) in order to provide customers with consistent information for all money market fund transactions.

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19 *Id.*, at 155 n.491. Based on staff analysis of Form N-MFP data between November 2010 and November 2013, 53% of money market funds would have fluctuated in price over a twelve-month period with an NAV priced using basis point rounding, compared with less than 5% of money market funds that would have fluctuated in price using 10 basis point rounding. *Id.*, at 158-59.

20 *Id.*, at section III.E.9.c.

21 17 CFR 270.2a-7(h)(10)(iii).

22 Another commenter stated that institutions and intermediaries can demand more frequent confirmations through independent negotiations with money market fund providers. *See* Dreyfus Letter, at 35. Such an option, however, would not necessarily be available for retail investors in institutional prime money market funds.

23 *See* 17 CFR 240.10b-10(b); *see also supra*, Note 4, citing certain specific relevant conditions.

Given that there will be price fluctuations in institutional prime money market funds, the Commission preliminarily believes that it may be necessary or appropriate in the public interest and consistent with the protection of investors to also require that broker-dealers provide immediate confirmations upon a customer's request. Accordingly, to be eligible for the exemption from Rule 10b-10(a), the Commission proposes an additional condition beyond those in place pursuant to Rule 10b-10(b). Specifically, the Commission proposes that, to be exempt from the immediate confirmation requirements of Rule 10b-10(a), the broker-dealer must (1) notify 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 (2) not receive any such request from the customer. This condition would provide investors with an option to receive confirmation information regarding a transaction at or before the completion of a securities transaction, while also providing relief to broker-dealers in circumstances where customers would not view this additional information as beneficial.

Taking all of these factors into consideration, and consistent with the exemptions and related conditions applicable to money market funds that attempt to maintain a stable NAV, the Commission preliminarily believes that a conditional exemption is necessary and appropriate in the public interest, and consistent with the protection of investors. Therefore, the Commission proposes to exempt broker-dealers 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),[24] 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 request from the customer.

Solicitation of Comment

The Commission requests comment on all aspects of this proposed exemptive order, including, but not limited to, the following questions:

- Do the monthly statements and other requirements under Rule 10b-10(b)(2) and (3) provide an appropriate alternative to immediate confirmations for transactions in floating NAV money market funds? What are the advantages and disadvantages to various market participants (including broker-dealers, shareholders, and funds) of permitting broker-dealers to provide fund shareholders of floating NAV money market funds with monthly confirmation statements?
- What are the reasons why shareholders might prefer to receive confirmation information immediately for floating NAV money market funds? What are the costs to broker-dealers associated with providing immediate confirmations? In particular, what are the nature and magnitude of such costs associated with providing immediate confirmations, and what, if any, costs would be passed along to investors?
- Should the Commission consider any alternatives other than the proposed exemption to the Exchange Act Rule 10b-10 requirements in the context of a floating NAV fund outlined above, such as requiring the provision of confirmations to shareholders at some

[24] The proposed conditions under "(i)" and "(ii)" above are consistent with the confirmation delivery requirements provided in Exchange Act Rule 10b-10(b) for all transactions in investment companies that attempt to maintain a constant NAV where no sales load or redemption fee is charged. 17 CFR 240.10b-10(b).

different time interval (*e.g.*, weekly statements)? Should broker-dealers be required to provide immediate confirmations upon request by an investor? Rather than requiring immediate confirmations upon request by an investor, should the Commission consider any alternatives (*e.g.*, requiring next-day delivery upon investor request)? What benefits and costs would be associated with any alternative approach?

- Should the Commission give investors the option to request delivery of an immediate confirmation statement for floating NAV money market funds? If investors should have that option, should the Commission require that broker-dealers notify the customer of its ability to request delivery of an immediate confirmation? What are the advantages and disadvantages of providing investors with the ability to request immediate confirmations? What are the potential effects on broker-dealers, investors, or other market participants? Should the Commission consider an alternative approach, such as requiring immediate confirmations unless the customer opts out?
- Would providing an exemption from the immediate confirmation delivery requirements of Exchange Act Rule 10b-10, as proposed, provide appropriate relief to broker-dealers and, at the same time, provide sufficient information to investors?

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

Release No. IC-31184; File No. S7-07-11

RIN 3235-AK61

Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule

AGENCY: Securities and Exchange Commission.

ACTION: Re-proposed rule; proposed rule

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is re-proposing certain amendments, initially proposed in March 2011, related to the removal of credit rating references in rule 2a-7, the principal rule that governs money market funds, and Form N-MFP, the form that money market funds use to report information to the Commission each month about their portfolio holdings, under the Investment Company Act of 1940 ("Investment Company Act" or "Act"). The re-proposed amendments would implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We are issuing this re-proposal in consideration of comments received on our March 2011 proposal. In addition, we are proposing to amend rule 2a-7's issuer diversification provisions to eliminate an exclusion from these provisions that is currently available for securities subject to a guarantee issued by a non-controlled person.

DATES: Comments should be received on or before [insert date 60 days after publication in the Federal Register.]

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

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- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-07-11 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-07-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/proposed.shtml). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Erin C. Loomis, Senior Counsel; Amanda Hollander Wagner, Senior Counsel; Penelope W. Saltzman, Senior Special Counsel; Investment Company Rulemaking Office, at (202) 551-6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: We are proposing for public comment amendments to rule 2a-7 [17 CFR 270.2a-7] and Form N-MFP [17 CFR 274.201] under the Investment

Company Act.[1]

TABLE OF CONTENTS

I. BACKGROUND

A. Credit Rating References

Section 939A of the Dodd-Frank Act requires each federal agency, including the Commission, to "review any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings."[2] That section further provides

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[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a-7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[2] Pub. L. No. 111-203 § 939A(a)(1)-(2). Section 939A of the Dodd-Frank Act applies to all federal

that each such agency shall "modify any such regulations identified by the review . . . to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations."[3]

As a step toward implementing these mandates, in March 2011 we proposed to replace references to credit ratings issued by nationally recognized statistical rating agencies ("NRSROs") in two rules and four forms under the Securities Act of 1933 ("Securities Act") and the Investment Company Act, including rule 2a-7 and Form N-MFP under the Investment Company Act.[4] The 2011 proposal preceded other amendments to rule 2a-7 and Form N-MFP

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agencies.

3 Pub. L. No. 111-203 § 939A(b). Section 939A of the Dodd Frank Act provides that agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

4 *See* References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)] ("2011 Proposing Release"). Specifically, we proposed to: (i) remove references to credit ratings in rules 2a-7 and 5b-3 under the Investment Company Act and replace them with alternative standards of creditworthiness; (ii) adopt new rule 6a-5 under the Investment Company Act that would establish a creditworthiness standard to replace the credit rating reference in section 6(a)(5) removed by the Dodd-Frank Act; (iii) eliminate required disclosures of credit ratings in Form N-MFP under the Investment Company Act; and (iv) remove the requirement that credit ratings be used when portraying credit quality in shareholder reports from Forms N-1A, N-2, and N-3 under the Securities Act and the Investment Company Act. In December 2013, we adopted amendments removing references to credit ratings in rule 5b-3 and eliminating the required use of credit ratings in Forms N-1A, N-2, and N-3. *See* Removal of Certain References to Credit Ratings under the Investment Company Act, Investment Company Act Release No. 30847 (Dec. 27, 2013) [79 FR 1316 (Jan. 8, 2014)] ("2013 Ratings Removal Adopting Release"). We adopted new rule 6a-5 on November 19, 2012. *See* Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption, Investment Company Act Release No. 30268 (Nov. 19, 2012) [77 FR 70117 (Nov. 23, 2012)].

Rule 3a-7 under the Investment Company Act also contains a reference to ratings. In August 2011, in a concept release soliciting comment on the treatment of asset-backed issuers under the Investment Company Act, we sought comment on the role, if any, that credit ratings should continue to play in the context of rule 3a-7. *See* Treatment of Asset-Backed Issuers under the Investment Company Act, Investment Company Act Release No. 29779 (Aug. 31, 2011) [76 FR that we proposed last year as part of our broader efforts to reform money market funds.[5] At that time, we noted that we were not rescinding our 2011 proposal to remove ratings references from certain rules and forms under the Investment Company Act, but that we intended to address the matter at another time.[6]

We received several comments on the 2013 Money Market Fund Proposing Release suggesting that we act on credit ratings as part of our broader money market fund reforms.[7] And today in another release, we have adopted certain amendments to rule 2a-7 and Form N-MFP that we proposed last year.[8] We also received comments on the 2011 Proposing Release that raised a number of concerns with respect to the proposed amendments and suggested alternative rule text for some provisions. We have determined to re-propose amendments to replace references to credit ratings in rule 2a-7 and to modify provisions in Form N-MFP that reference

55308 (Sept. 7, 2011)] at section III.A.1.

5 *See* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (June 5, 2013) [78 FR 36834 (June 19, 2013)] ("2013 Money Market Fund Proposing Release"). The 2013 rule proposals were designed to address money market funds' susceptibility to heavy redemptions, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving, as much as possible, the benefits of money market funds.

6 *Id.* at text accompanying n.130.

7 *See* Comment Letter of Wells Fargo Funds Management, LLC (Sept. 16, 2013); Comment Letter of Hester Pierce & Robert Greene, Mercatus Center, George Mason University (Sept. 17, 2013); Comment Letter of The Dreyfus Corporation (Sept. 17, 2013). Comments on the 2013 Money Market Fund Proposing Release are available at: http://www.sec.gov/comments/s7-03-13/s70313.shtml.

8 *See* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166, (July 23, 2014) ("2014 Money Market Fund Adopting Release"), which is published elsewhere in this issue of the Federal Register. With this re-proposal, the Commission is not re-opening comment on the amendments adopted in the 2014 Money Market Fund Adopting Release.

Unless otherwise noted, all references to rule 2a-7 and Form N-MFP in this release refer to rule 2a-7 and Form N-MFP as amended by the 2014 Money Market Fund Adopting Release. References to provisions of rule 2a-7 and Form N-MFP as they would be modified by the amendments we re-propose in this release are preceded by the term "re-proposed" (*i.e.,* "re-proposed rule 2a-7").

credit ratings, in consideration of the mandate of Dodd-Frank Act section 939A, the comments on the 2011 Proposing Release, and the broader money market fund reforms we have adopted today.[9]

A number of other federal agencies have also taken action to implement section 939A of the Dodd-Frank Act, including regulations proposed or adopted by the Commodity Futures Trading Commission, the Office of the Comptroller of the Currency ("OCC"), the National Credit Union Administration, the Federal Housing Finance Agency, the Department of Labor, and jointly by the OCC and Board of Governors of the Federal Reserve.[10] In some of these initiatives, the references to ratings were or would be replaced with an alternative standard designed to retain the same degree of credit quality as reflected by the use of credit ratings. We have considered the actions taken by these other regulators in re-proposing the amendments discussed in this release.

B. Exclusion from the Issuer Diversification Requirement

As noted above, today we adopted amendments to rule 2a-7 as part of our broader money market fund reforms. These included amendments relating to the rule's diversification

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9 As discussed above, the Commission is not re-opening comment on amendments to rule 2a-7 that were adopted in the 2014 Money Market Fund Adopting Release. *See supra* note 8.

10 *See* OCC and Board of Governors of the Federal Reserve System, Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule [78 FR 62018 (Oct. 11, 2013)]; Department of Labor, Proposed Amendments to Class Prohibited Transaction Exemptions to Remove Credit Ratings Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act [78 FR 37572 (June 21, 2013)]; Federal Housing Finance Agency, Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks [78 FR 30784 (May 23, 2013)]; National Credit Union Administration, Alternatives to the Use of Credit Ratings [77 FR 74103 (Dec. 13, 2012)]; OCC, Alternatives to the Use of External Credit Ratings in the Regulations of the OCC [77 FR 35253 (June 13, 2012)]; Commodity Futures Trading Commission, Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings [76 FR 44262 (July 25, 2011)].

provisions, which require a money market fund to diversify its investments with respect to issuers of the securities it acquires, as well as providers of demand features and guarantees related to those securities. As discussed in the 2014 Money Market Fund Adopting Release,[11] we sought comment on specific amendments we proposed as well as more broadly on the issuer and guarantor diversification requirements. Some of the comments we received in response prompted us to re-evaluate the exclusion to the issuer diversification requirement for securities subject to a guarantee issued by a non-controlled person. After careful consideration, and consistent with our reform goal of limiting concentrated exposure of money market funds to particular economic enterprises, we are proposing amendments that would eliminate this exclusion from the issuer diversification requirement of rule 2a-7.

II. DISCUSSION

A. Rule 2a-7

The Investment Company Act and applicable rules generally require investment companies ("funds") to calculate current net asset value per share by valuing their portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the board of directors.[12] These valuation requirements are designed to prevent unfair share pricing from diluting or otherwise adversely affecting the interests of investors.[13] Rule 2a-7 under the Investment Company Act, which governs the operation of

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11 *See* 2014 Money Market Fund Adopting Release, *supra* note 7, at section III.I.*1*.d.

12 *See* section 2(a)(41) of the Investment Company Act (defining value), rule 2a-4 (defining current net asset value), and rule 22c-1 (generally requiring open-end funds to sell and redeem their shares at a price based on the funds' current net asset value as next computed after receipt of a redemption, purchase, or sale order).

13 If shares are sold or redeemed based on a net asset value that has been either understated or overstated compared to the amount at which portfolio instruments could have been sold, then the interests of either existing shareholders or new investors will have been diluted. *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release

money market funds, exempts certain money market funds from these valuation requirements. Until today, all money market funds have been permitted to value their portfolio securities using the amortized cost method of valuation ("amortized cost method") and to use the penny-rounding method of pricing ("penny-rounding method") to maintain a stable share price, typically $1.00 per share.[14] After the amendments adopted today go into effect, however, institutional prime and institutional municipal money market funds (collectively, "institutional prime funds"[15]) will be required to sell and redeem shares at their net asset value calculated on the current market-based value of the securities in their underlying portfolios, rounded to the fourth decimal place (*e.g.*,

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No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] at text accompanying and following nn. 39-40; *see also* 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.D (providing valuation guidance aimed at, among other things, promoting stronger valuation practices that may lessen a money market fund's susceptibility to heavy redemptions by decreasing the likelihood of sudden portfolio write-downs that could encourage financially sophisticated investors to redeem early).

14 Under the amortized cost method, portfolio instruments are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. *See* rule 2a-7(a)(2). Share price is determined under the penny-rounding method by valuing securities at market value, fair value or amortized cost and rounding the per share net asset value to the nearest cent on a share value of a dollar, as opposed to the nearest one tenth of one cent as otherwise would be required. *See* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] ("1983 Adopting Release"), at n.6 ("Release 9786 sets the amount of less than 1/10 of one cent on a share value of one dollar as the benchmark for materiality."); Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)] at text accompanying n.11; rule 2a-7(a)(20) (defining penny-rounding method).

While most money market funds maintain a stable net asset value ("NAV"), some fund sponsors have established floating NAV money market funds in past years. *See Northern Trust Files to Launch Investors Variable NAV Money Funds*, Crane Data (Dec. 31, 2012), http://cranedata.com/archives/all-articles/4314/.

15 As part of these amendments, the Commission has amended rule 2a-7 to rescind the exemptions that previously permitted institutional prime funds (*i.e.*, money market funds other than government and retail money market funds, including municipal money market funds that fall under the definition of "retail money market fund" under rule 2a-7 as amended) to maintain a stable share price by use of amortized cost valuation and/or penny rounding. *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.B.

\$1.0000[16]), *i.e.*, transact at a "floating" net asset value per share ("NAV").[17]

Rule 2a-7 contains "risk limiting" provisions designed to minimize the amount of risk a money market fund may assume.[18] For those funds that are permitted to maintain a stable share price, these conditions help reduce the deviation between a money market fund's stabilized share price and the market value of its portfolio. For floating NAV funds, these conditions help to limit the risk of loss by, among other things, reducing principal volatility. Any fund that holds itself out to investors as a money market fund or the equivalent of a money market fund also must comply with these conditions.[19] Among these conditions, rule 2a-7 limits a money market fund's portfolio investments to "eligible securities," or securities that have received credit ratings from the "requisite NRSROs" in one of the two highest short-term rating categories or comparable unrated securities.[20] A requisite NRSRO is an NRSRO that a money market fund's board of directors has designated for use (a "designated NRSRO") and that issues credit ratings that the board determines, at least annually, are sufficiently reliable for the fund to use in determining the eligibility of portfolio securities.[21] Rule 2a-7 further restricts money market

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16 A money market fund could also price its shares at an equivalent or more precise level of accuracy for funds with a different share price. For example, a money market fund with a \$10 target share price could price its shares at \$10.000. *See* rule 2a-7(c)(1)(ii).

17 *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.B. We note that the compliance date for the floating NAV amendments adopted in the 2014 Money Market Fund Adopting Release is three years after the amendments' effective date.

18 Rule 2a-7 contains conditions that apply to each investment a money market fund proposes to make, as well as conditions that apply to a money market fund's entire portfolio. Although institutional prime funds are no longer permitted to maintain a stable share price by use of amortized cost valuation and/or penny rounding, these funds remain subject to the "risk limiting" provisions of rule 2a-7.

19 *See* rule 2a-7(b) (prohibiting a fund from holding itself out as a money market fund unless it complies with the provisions of rule 2a-7, including the risk limiting conditions of rule 2a-7(d)).

20 *See* rule 2a-7(d)(2)(i). The term "eligible security" is defined in rule 2a-7(a)(12).

21 *See* rule 2a-7(a)(11) (defining "designated NRSRO"); rule 2a-7(a)(24) (defining "requisite NRSRO").

funds to securities that the fund's board of directors (or the board's delegate[22]) determines present minimal credit risks, and specifically requires that determination "be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO."[23] A money market fund is required to invest at least 97 percent of its total assets in eligible securities that have received a rating from the requisite NRSROs in the highest short-term rating category for debt securities ("first tier securities"[24]) or unrated securities of comparable quality.[25]

To implement the mandate of Dodd-Frank Act section 939A, we are re-proposing amendments to remove references to credit ratings in rule 2a-7. The re-proposed amendments would affect five elements of the rule: (i) determination of whether a security is an eligible security; (ii) determination of whether a security is a first tier security; (iii) credit quality

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22 A money market fund board may delegate minimal credit risk determinations, and typically does to the fund's adviser, provided that the board retains sufficient oversight. *See* rule 2a-7(j); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)] ("1991 Adopting Release") (permitting a money market fund's board of directors to delegate the responsibility to make such determinations). *See also* INVESTMENT COMPANY INSTITUTE, REPORT OF THE MONEY MARKET WORKING GROUP (Mar. 17, 2009) ("ICI WORKING GROUP REPORT"), *available at* http://www.ici.org/pdf/ppr_09_mmwg.pdf, at Appendix I ("In our experience, Boards uniformly delegate the determination of minimal credit risks to their fund's adviser."); Comment Letter of Mutual Fund Directors Forum (Apr. 25, 2011) ("MFDF Comment Letter") ("as we have consistently commented in the past, … money fund boards will not themselves determine the creditworthiness of individual money market securities. Rather consistent with the provisions of rule 2a-7, boards will delegate this task in virtually all circumstances to the fund's adviser."). When discussing or requesting comment on policies, procedures or practices regarding minimal credit risk determinations, this release identifies fund advisers as making the determinations. Comments on the 2011 Proposing Release are available at: http://www.sec.gov/comments/s7-07-11/s70711.shtm.

23 Rule 2a-7(d)(2)(i). Thus, under the current rule, if the security is rated, having the requisite NRSRO rating is a necessary but not sufficient condition for investing in the security and cannot be the sole factor considered in determining whether a security presents minimal credit risks. *See* 1991 Adopting Release, *supra* note 22, at text preceding n.18.

24 *See* rule 2a-7(a)(14) (defining "first tier security").

25 *See* rule 2a-7(d)(2)(ii) (prohibiting a fund immediately after the acquisition of any second tier security from holding more than 3% of its total assets in second tier securities).

standards for securities with a conditional demand feature; (iv) requirements for monitoring securities for ratings downgrades and other credit events; and (v) stress testing.[26] The re-proposed amendments to rule 2a-7 reflect our consideration of commenters' concerns and suggested modifications to our 2011 proposal, as well as the broader money market fund reforms we have adopted today. These re-proposed amendments are designed to remove references to, or requirement of reliance on, credit ratings in rule 2a-7 and to substitute standards of creditworthiness that we believe are appropriate.[27]

1. Eligible Securities

In 2011, we proposed to eliminate the requirement that eligible securities be rated.[28] Instead, the Commission would have required that fund boards: first, determine whether securities are eligible securities based on minimal credit risks; and second, distinguish between first and second tier securities based on subjective standards similar to those the ratings agencies have developed to describe their ratings.[29] We requested comments on this proposal, including comments on whether the Commission should limit money market funds to investing in securities solely based on a minimal credit risk determination, *i.e.*, establish a single test for determining whether a fund could invest in a security.

A number of commenters objected to our proposal to retain the distinction between first and second tier securities.[30] They asserted that these proposed amendments were (i) unworkable

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26 The re-proposed amendments also would make conforming amendments to rule 2a-7's recordkeeping and reporting requirements. *See* re-proposed rule 2a-7(h)(3).

27 In addition, we are re-proposing a technical revision that would update a cross-reference in rule 2a-7(a)(5) to reflect amendments to rule 5b-3 adopted last year. *See supra* note 4.

28 *See* 2011 Proposing Release, *supra* note 4.

29 *See id.* at section II.A.1.

30 *See, e.g.*, Comment Letter of Calvert Group, Ltd. (Apr. 25, 2011); Comment Letter of The Dreyfus Corporation (Apr. 25, 2011) ("Dreyfus Comment Letter"); Comment Letter of

because of the difficulty in differentiating between first and second tier securities and (ii) redundant because the amendments would require fund boards and their advisers to apply almost indistinguishable subjective judgments in determining whether securities were both eligible securities and first tier securities.[31] Instead, they urged that we combine the two criteria and require a single, uniform, very high standard of quality.[32] Specifically, several commenters suggested that the rule define an "eligible security" to mean a security with a remaining maturity of 397 calendar days or less that the fund's board of directors (or the board's delegate) determines presents minimal credit risks and include a determination that the security's issuer has "the highest capacity" or "a strong capacity" to meet its short-term obligations.[33] These

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Investment Company Institute (Apr. 25, 2011) ("ICI Comment Letter"); Comment Letter of the Independent Directors' Council (Apr. 25, 2011) ("IDC Comment Letter"); Comment Letter of Charles Schwab Investment Management Inc. (Apr. 25, 2011) ("Schwab Comment Letter"); Comment Letter of T. Rowe Price Associates, Inc. (Apr. 25, 2011) ("T. Rowe Price Comment Letter"); Comment Letter of Vanguard (Apr. 26, 2011) ("Vanguard Comment Letter"). *But see* Comment Letter of Federated Investors, Inc. (Apr. 25, 2011) ("Federated Comment Letter") (supporting a distinction between first and second tier securities); Comment Letter of Invesco Advisers, Inc. (Apr. 25, 2011) ("Invesco Comment Letter") (also supporting this distinction).

31 *See, e.g.,* Comment Letter of Fidelity Investments (Apr. 28, 2011) ("Fidelity Comment Letter") ("Under the [p]roposed [r]ule, tier categorizations will no longer be determined by a clear, objective standard based on published credit rating agency ratings; rather, that determination will be put in the hands of myriad money market mutual funds, and a fund's standards for the first and second tiers could change from month to month, or even week to week . . . result[ing] in less predictability and more confusion for investors seeking a stable and consistent product . . . ."); Schwab Comment Letter, *supra* note 30 ("[the retention of first tier and second tier securities,] given the elimination of credit ratings, is redundant with the investment adviser's ongoing obligation to monitor for minimal credit risks.").

32 *See* ICI Comment Letter, *supra* note 30; Schwab Comment Letter, *supra* note 30; T. Rowe Price Comment Letter, *supra* note 30. *But see* MFDF Comment Letter, *supra* note 22 (advocating maintaining the distinction between first and second tier securities as a risk-limiting condition in rule 2a-7, but questioning the usefulness of the distinction between first and second tier securities when the proposed description of the difference "comes dangerously close to establishing a distinction that is more semantic than substantive").

33 *See* ICI Comment Letter, *supra* note 30 (recommending that the Commission adopt a "strong capacity" standard as an appropriate substitute for the credit rating references in rule 2a-7, noting that this standard reflects certain NRSROs' highest short-term rating category, but also recommending that the Commission adopt an "exceptionally strong capacity" standard, which

commenters noted that securities meeting this uniform standard would be generally comparable to securities rated in the highest short-term rating category, which are first tier securities under current rule 2a-7.[34]

After consideration of the comments and the statutory directive to eliminate references to ratings in our rules, and to seek consistent standards of creditworthiness to the extent feasible, we are re-proposing amendments to rule 2a-7. The re-proposal would combine the two risk criteria into a single standard, which would be included as part of rule 2a-7's definition of eligible security.[35] As re-proposed, an eligible security would be a security with a remaining maturity of 397 calendar days or less that the fund's board of directors (or its delegate) determines presents minimal credit risks, which determination includes a finding that the security's issuer has an exceptionally strong capacity to meet its short-term obligations.[36] Thus, under our re-proposal, a

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would be consistent with the definitions used by many NRSROs to define their highest long-term category, as an alternative substitute for the credit rating references in rule 5b-3); Vanguard Comment Letter, *supra* note 30 (advocating a determination that the issuer have the "highest capacity" to meet those obligations).

34 *See id.*

35 Currently, the requirement that the fund board (or its delegate) determine that a security presents minimal credit risks is set forth in rule 2a-7(d)(2)(i) (requiring that the determination of minimal credit risk be based on factors pertaining to credit quality in addition to any rating assigned by a designated NRSRO). Under our re-proposal, the definition of eligible security in the rule would be restructured to include the minimal credit risk determination, and would include government securities and securities issued by money market funds, which are currently included in the definition of first tier security. *See* rule 2a-7(a)(14).

36 Re-proposed rule 2a-7(a)(11). The re-proposal would make a conforming change to the recordkeeping requirements under the rule to reflect that funds must retain a written record of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks. *See* re-proposed rule 2a-7(h)(3).

The re-proposal also would eliminate the following defined terms from the rule: "designated NRSRO," "first tier security," "rated security," "requisite NRSROs," "second tier security," and "unrated security." It also would revise a number of provisions in the rule that currently reference these terms. *See* rule 2a-7(a)(12) (eligible security); rule 2a-7(d)(2) (portfolio quality); rule 2a-7(d)(3)(i)(A)(1) and (C) (portfolio diversification); rule 2a-7(d)(3)(iii)(C) (portfolio diversification); rule 2a-7(f)(1) (downgrades); rule 2a-7(h)(3) (record keeping and reporting); rule 2a-7(j) (delegation).

money market fund would be limited to investing in securities that the fund's board (or its delegate) has determined present minimal credit risks, notwithstanding any rating the security may have received. In addition, fund boards would no longer be required to designate NRSROs.[37] The re-proposed determination is designed to retain a degree of credit risk similar to that in the current rule by allowing for gradations in credit quality among securities that meet a very high standard of credit quality,[38] while limiting a money market fund's investments in second tier securities to those the fund determines do not diminish the overall high quality of the fund's portfolio.[39]

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37 Nor would fund boards have to disclose designated NRSROs in the statement of additional information ("SAI"). We note that after enactment of the Dodd-Frank Act, our staff issued a no-action letter assuring money market funds and their managers that, in light of section 939A, the staff would not recommend enforcement action under section 2(a)(41) of the Act and rules 2a-4 and 22c-1 thereunder if a money market fund board did not designate NRSROs and did not make related disclosures in the fund's SAI before the Commission had completed its review of rule 2a-7 required by the Dodd-Frank Act and made any modifications to the rule. *See* SEC Staff No-Action Letter to the Investment Company Institute (Aug. 19, 2010).

38 *See* Fitch Ratings, Definitions of Ratings and Other Forms of Opinion, Jan. 2014, http://www.fitchratings.com/web_content/ratings/fitch_ratings_definitions_and_scales.pdf ("Fitch Ratings Scales"), at 18 (stating that a rating of F1 "[i]ndicates the strongest intrinsic capacity for timely payments of financial commitments"); Moody's Investor Service, Rating Symbols and Definitions, Apr. 2014, https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004 ("Moody's Rating Definitions"), at 6 (stating that Prime-1 issuers "have a superior ability to repay short-term debt obligations"); Standard & Poor's, Standard & Poor's Ratings Definitions, Apr. 27, 2011, http://img.en25.com/Web/StandardandPoors/Ratings_Definitions.pdf ("S&P Ratings Definitions"), at 5 (stating that for a rating of A-1, "[t]he obligor's capacity to meet its financial commitment on the obligation is strong").

39 A number of commenters expressed concern that the standards proposed in 2011 would simultaneously raise the standards for first tier securities and weaken the standards for second tier securities. *See* ICI Comment Letter, *supra* note 30; T. Rowe Price Comment Letter, *supra* note 30; Dreyfus Comment Letter, *supra* note 30. Each of these comments notes that the proposed standard that a first tier security issuer or guarantor have the "highest" capacity to meet its short-term obligations could raise the standard above that in the current rule because this standard, if taken literally, does not contemplate any variation in creditworthiness among issuers of first tier securities. In contrast, the current definition of first tier security refers to issuers and guarantors falling within a certain *range* of capacities to repay their short-term obligations. These comments also maintain that the proposed standard for second tier securities, which was not tied to minimum rating requirements, could permit a fund to invest in securities that would not be

As a result of the single standard and elimination of the distinction between first and second tier securities we are re-proposing, we also are re-proposing to remove the current prohibition on funds investing more than 3 percent of their portfolios in second tier securities.[40] In 2010, we imposed greater limits on investments in second tier securities because they may experience greater price volatility and illiquidity than first tier securities in times of market stress, which could adversely affect a money market fund's ability to maintain a stable net asset value.[41] Nevertheless, as we acknowledged in 2010, investors could benefit from these investments to the extent that a money market fund could conclude, after a thorough risk analysis, that second tier securities provide a higher yield than first tier securities while maintaining a risk profile consistent with the fund's investment objectives.[42] By eliminating the rule's current limitations on investments in second tier securities, funds theoretically could invest in second tier securities to a greater extent than permitted today.[43] The re-proposed standard, however, is designed to preserve the current degree of risk limitation in rule 2a-7 without

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eligible securities under the current rule.

40 *See* rule 2a-7(d)(2)(ii). In conforming changes, we re-propose to move the requirement currently in the definition of eligible security that the issuer of a demand feature or guarantee promptly notify the holder of the security in the event the demand feature or guarantee is substituted with another demand feature or guarantee (if such substitution is permissible) to the paragraphs of the rule that address securities subject to guarantees and conditional demand features. *Compare* rule 2a-7(a)(12)(iii)(B) *with* re-proposed rules 2a-7(d)(2)(ii) and 2a-7(d)(2)(iii)(D).

41 *See* Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] ("2010 Money Market Fund Adopting Release"), at nn.52-53 and accompanying text (explaining that second tier securities are subject to greater spread risk and trade in thinner markets than first tier securities and noting that second tier securities are more likely to be downgraded than first tier securities).

42 *See id.* at text accompanying and following n.54.

43 *See* rule 2a-7(c)(3)(ii). Money market funds also are limited from investing more than ½% of their assets in second tier securities of a single issuer and 2.5% of their portfolios in second tier securities issued, guaranteed or subject to a demand feature issued by the same entity. *See* rule 2a-7(d)(3)(i)(C) and rule 2a-7(d)(3)(iii)(C). These limits also would be eliminated under our re-proposal.

reference to credit ratings by requiring a fund's board (or its delegate) to determine that the issuer of a portfolio security has an exceptionally strong capacity to meet its short-term obligations, a finding that some boards or fund advisers may determine can be met by second tier rated securities (but only of the highest quality).[44]

We do not believe that securities that are rated in the third-highest category for short-term ratings (or comparable unrated securities), whose issuers need only have an acceptable or adequate ability to repay short-term obligations under rating agency standards, would satisfy the re-proposed "exceptionally strong capacity" standard.[45] We therefore believe, as a practical matter, that the re-proposed standard would generally preclude funds from determining that securities rated "third tier" (or comparable unrated securities) would be eligible securities under rule 2a-7.

In determining whether a security presents minimal credit risks, a fund adviser could take into account credit quality determinations prepared by outside sources, including NRSRO ratings, that the adviser considers are reliable in assessing credit risk. In considering such sources, an adviser should understand the particular NRSRO's methodology for determining the rating at issue and make an independent judgment of credit risks, and it should consider any outside source's record with respect to evaluating the types of securities in which the fund invests.

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44 *See* ICI Comment Letter, *supra* note 30 (stating that the Dodd-Frank Act "does not leave any means of explicitly limiting acquisitions of securities rated below the highest category [but a single, uniform, very high standard] would at least require money market funds to determine that such securities do not diminish the overall credit quality of their portfolios").

45 *See* Fitch Ratings Scales, *supra* note 38, at 18 (a rating of F3 indicates the "intrinsic capacity for timely payment of financial commitments is adequate."); Moody's Rating Definitions, *supra* note 38, at 6 ("Issuers (or supporting institutions) rated Prime-3 have an acceptable ability to repay short-term debt obligations."); S&P Ratings Definitions, *supra* note 38, at 5 ("A short-term obligation rated 'A-3' exhibits adequate protection parameters.").

We request comment on consolidating the credit quality standard and eliminating the distinction between first and second tier securities. Do commenters believe that the re-proposed standard is an appropriate standard of creditworthiness for rule 2a-7? Is the re-proposed "exceptionally strong capacity" standard an appropriate substitute for credit ratings in rule 2a-7? Is there another standard that would be a more appropriate substitute for credit ratings in rule 2a-7? Would the re-proposed consolidated standard, which requires a minimum credit risk determination and includes a finding that the issuer has an "exceptionally strong capacity" to meet its short-term obligations, provide sufficient clarity for money market fund boards and advisers making credit quality determinations? Would such a standard impact investors' understanding of credit quality? Would it promote greater or less uniformity in credit quality determinations among funds than the standard we proposed in 2011? Would the 2011 proposal establish risk limitations more in line with those provided under the current rule? Is there an alternative standard for making credit quality determinations that is more objective than the re-proposed standard? We note that no commenters provided suggestions when we sought comment in the 2011 proposal on alternatives that would provide a more objective evaluation of credit quality; have commenters' positions on this issue evolved since 2011?

We also request specific comment on the finding, required as part of the minimal credit risk determination, that the security's issuer has an exceptionally strong capacity to meet its short-term financial obligations. What impact is this proposed standard likely to have on the overall risk of money market fund portfolios? What impact is this re-proposed "exceptionally strong capacity" standard likely to have on money market fund acquisitions of first tier securities? Does it permit sufficient variation among the most creditworthy issuers? Similarly, what impact is the re-proposed "exceptionally strong capacity" standard likely to have on money market fund acquisitions of second tier securities? Will this re-proposed standard, and the elimination of the distinction between first and second tier securities in rule 2a-7, lead money market funds to acquire more second tier securities than they do currently? Would a finding that a security's issuer instead has a "superior," "very strong," or "strong" capacity to meet its short-term financial obligations better reflect the current risk limitation in rule 2a-7, or would it result in a standard that is less stringent than under the current rule? Our goal is to preserve a similar degree of risk limitation as in the current rule, and we note that the phrase "strong capacity" reflects the standard that one NRSRO articulates for securities with a second tier rating.[46]

As discussed above, we believe that the re-proposed standard would preclude funds from investing in securities rated third tier (or comparable unrated securities).[47] Do funds agree? We do not believe that the re-proposed standard should significantly affect money market funds' investment in unrated securities because we understand that money market funds hold few unrated securities.[48] We request comment about the potential reasons for this current practice. Specifically, is there currently a limited supply of unrated securities that qualify as eligible securities, or do money market funds hold few unrated securities for other reasons (*e.g.*, investor or board of directors' requirements for ratings)? Would money market funds invest in more unrated securities under our re-proposed amendments?

As discussed in the 2014 Money Market Fund Adopting Release, we recognize that

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46 *See* Moody's Rating Definitions, *supra* note 38, at 6 ("Issuers (or supporting institutions) rated Prime-2 have a strong ability to repay short-term debt obligations.").

47 *See supra* note 45 and accompanying text.

48 Based on Form N-MFP filings from February 28, 2014, we estimate that 0.005% of money market fund assets under management were invested in unrated securities. Many securities that funds list as unrated in Form N-MFP filings actually are issued as part of a rated program or have an issuer or guarantor that is rated. *See* rule 2a-7(a)(22)(i), (ii) (defining "rated security" to include a security that has received the requisite short-term rating from a designated NRSRO, or that is issued by an issuer or has a guarantee with such a rating).

certain of the amendments to rule 2a-7 adopted today could affect money market fund managers' investment decisions. Under the newly adopted amendments to rule 2a-7, certain money market funds would be required to transact using a floating NAV. Managers of floating NAV funds, in an effort to limit volatility, might further limit their investments in relatively riskier portfolio securities, or conversely, in an effort to increase yield, might increase their investments in such securities. As described in more detail below, we request comment on the extent to which the re-proposed standard may affect the potential incentive for certain funds to invest in riskier securities (*i.e.*, those securities that would be second tier under current rule 2a-7). Would a finding that issuers have an "exceptionally strong capacity" to meet their short-term obligations mitigate any risks associated with floating NAV funds' potential incentives to invest in riskier securities? Would a finding that issuers have a "superior," "very strong," or "strong" repayment ability be a sufficient risk mitigant?

Also under the amendments to rule 2a-7 we adopted today, all money market funds (including those still able to transact at a stable NAV) will be required to disclose daily the market value of their portfolios generally to the fourth decimal place.[49] If a money market fund were to invest to a greater extent than its peer funds in riskier second tier securities, then that fund would have greater volatility in price or market value of its shares, as compared to the volatility and price of its peer funds' shares. We request comment on whether potential incentives for increased investments in riskier second tier securities would be reduced by market discipline resulting from these newly required disclosures.

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49 *See* rule 2a-7(h)(10)(iii); 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.E.9.c. To the extent a money market fund prices its shares using a share price other than \$1.0000, it would be required to disclose its share price at an equivalent level of accuracy. *See* rule 2a-7(h)(10)(iii). *See also supra* note 16 and accompanying text.

Rule 2a-7 does not set forth any specific factors that a board (or its delegate) should consider in determining minimal credit risks. In response to our 2011 proposal to replace an objective standard of an NRSRO rating for eligible securities with a subjective standard, some commenters advocated that we develop specific guidance in connection with assessments of credit quality.[50] We have provided guidance before regarding certain factors to be considered in minimal credit risk determinations for asset-backed securities under rule 2a-7 and in our release removing references to credit ratings from the net capital rule under the Securities Exchange Act of 1934.[51] Commission staff also has provided guidance in the past on factors that a board could consider in performing credit assessments under rule 2a-7.[52]

Our staff also has had opportunities to observe how money market fund advisers evaluate minimal credit risk through its examinations of money market funds. Although staff has noted a range in the quality and breadth of credit risk analyses among the money market funds examined, staff has also observed that when performing their minimal credit risk determinations, most of

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50 *See* Comment Letter of Better Markets (Apr. 25, 2011); Comment Letter of Americans for Financial Reform (Apr. 25, 2011).

51 *See* 2010 Money Market Fund Adopting Release, *supra* note 41, at section II.3; Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934, Securities Exchange Act Release No. 71194 (Dec. 27, 2013) [79 FR 26550 (Jan. 8, 2014)] ("2013 Net Capital Rule Amendments") at section II.B.1.a.iii (listing certain factors a broker-dealer could consider, as appropriate, under policies and procedures it establishes to assess whether a security or money market instrument has only a minimal amount of credit risk for purposes of rule 15c3-1 under the Securities Exchange Act of 1934). *See also* Comment Letter of Consumer Federation of America (Apr. 25, 2011) (suggesting the proposed standard could provide a limitation on money market fund firms' investments by requiring fund boards to review specific types of objective data that credit rating agencies and other risk assessment specialists consider in developing credit ratings); Comment Letter of Colorado Public Employees' Retirement Association (Apr. 21, 2011) (advocating that any approach to replacing credit ratings contain quantitative and qualitative elements with certain specific characteristics).

52 *See* Letter to Registrants from Kathryn McGrath, Director, Division of Investment Management, SEC (May 8, 1990) ("1990 Staff Letter"); Letter to Matthew Fink, President, Investment Company Institute from Kathryn McGrath, Director, Division of Investment Management, SEC (Dec. 6, 1989) ("1989 Staff Letter").

the advisers to these funds evaluate some common factors that bear on the ability of an issuer or guarantor to meet its short-term financial obligations.[53] Based on the staff's experience and in consideration of general criteria included in recommendations by an industry money market working group of best practices for making minimal credit risk determinations,[54] we believe that an assessment of the strength of any issuer's or guarantor's ability to satisfy these obligations generally should include an analysis of the following factors to the extent appropriate: (i) the issuer or guarantor's financial condition, *i.e.,* analysis of recent financial statements, including trends relating to cash flow, revenue, expenses, profitability, short-term and total debt service coverage, and leverage (including financial leverage and operating leverage);[55] (ii) the issuer or guarantor's liquidity, including bank lines of credit and alternative sources of liquidity; (iii) the issuer or guarantor's ability to react to future events, including a discussion of a "worst case scenario," and its ability to repay debt in a highly adverse situation; and (iv) the strength of the issuer or guarantor's industry within the economy and relative to economic trends as well as the issuer or guarantor's competitive position within its industry (including diversification in sources of profitability, if applicable).[56] In addition, a minimal credit risk evaluation could include an

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53 Under the current rule, a security may be determined to be an eligible security or a first tier security based solely on whether the guarantee is an eligible security or a first tier security, as the case may be. Rule 2a-7(d)(2)(ii).

54 ICI WORKING GROUP REPORT, *supra* note 22, at Appendix I.

55 Under the current rule, when a security's maturity is determined with reference to a demand feature, the fund's board of directors must perform an ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the demand feature's issuer. Rule 2a-7(g)(3).

56 Many of these considerations have been included in staff guidance as well as in best practices for determining minimal credit risk set forth in the Report of the Money Market Working Group submitted to the Board of Governors of the Investment Company Institute in 2009. *See* 1990 Staff Letter, *supra* note 52 (advising registrants that in the staff's view a board of directors can only make a minimal credit risk determination regarding a security based on an analysis of the issuer's capacity to repay its short-term debt, which analysis would include: (i) a cash flow

analysis of whether the price and/or yield of a security is similar to that of other securities in the fund's portfolio.[57]

The staff has also observed other factors that money market fund advisers may take into account when evaluating minimal credit risks of particular asset classes. To the extent applicable, fund advisers may wish to consider the following additional factors:

- For municipal securities: (i) sources of repayment; (ii) issuer demographics (favorable or unfavorable);[58] (iii) the issuer's autonomy in raising taxes and revenue; (iv) the issuer's reliance on outside revenue sources, such as revenue from a state or federal government entity; and (v) the strength and stability of the supporting economy.[59]

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analysis; (ii) an assessment of the issuer's ability to react to future events, including a review of the issuer's competitive position, cost structure and capital intensiveness; (iii) an assessment of the issuer's liquidity, including bank lines of credit and alternative sources of liquidity to support its commercial paper; and (iv) a "worst case scenario" evaluation of the issuer's ability to repay its short-term debt from cash sources or asset liquidations in the event that the issuer's backup credit facilities are unavailable); 1989 Staff Letter, *supra* note 52 (advising that in making its minimal credit risk determination, a money market fund board of directors should take into account certain kinds of factors, such as the issuer's or guarantor's current and future credit quality; the strength of the issuer's or guarantor's industry within the economy and relative to economic trends; the issuer's or guarantor's market position within its industry; cash flow adequacy; the level and nature of earnings; financial leverage; asset protection; the quality of the issuer's or guarantor's accounting practices and management; the likelihood and nature of event risks, and the effect of any significant ownership positions; the degree of financial flexibility of the issuer or guarantor to cope with unexpected challenges and to take advantage of opportunities, as well as an assessment of the degree and nature of event risks; the likelihood of a sudden change of credit quality from external and internal sources); ICI WORKING GROUP REPORT, *supra* note 22, at Appendix I (recommending the same general criteria set forth in the 1990 Staff Letter for assessing the credit risks of issuers and securities in procedures for determining minimal credit risks as well as consideration of financial and other information provided by the issuer). *See also* OCC Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment, 77 FR 35259 (June 13, 2012) ("OCC Guidance") (matrix of examples of factors for national banks and federal savings associations to consider as part of a robust credit risk assessment framework ("OCC credit risk factors") for certain investment securities includes capacity to pay and assess operating and financial performance levels and trends).

57 *See* 2013 Net Capital Rule Amendments, *supra* note 51, at second paragraph preceding n.99.

58 Demographics could include considerations such as the type, size, diversity and growth or decline of the local government's tax base, including income levels of residents, and magnitude of economic activity.

59 *See* 1989 Staff Letter, *supra* note 52 (additional factors such as sources of repayment, autonomy in raising taxes and revenue, reliance on outside revenue sources and strength and stability of the

- For conduit securities under rule 2a-7:[60] analysis of the underlying obligor as described above for all securities except asset backed securities (including asset backed commercial paper).[61]
- For asset backed securities (including asset backed commercial paper): (i) analysis of the underlying assets to ensure they are properly valued and that there is adequate coverage for the cash flows required to repay the asset backed security under various market conditions; (ii) analysis of the terms of any liquidity or other support provided; and (iii) legal and structural analyses to determine that the particular asset backed security involves no more than minimal credit risks for the money market fund.[62]
- For other structured securities, such as variable rate demand notes,[63] tender option bonds,[64] extendible bonds[65] or "step up" securities,[66] or other structures, in addition to

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supporting economy should be considered with respect to tax-exempt securities); OCC Guidance, *supra* note 56.

60 Under rule 2a-7, a "conduit security" means a security issued by a municipal issuer involving an arrangement or agreement entered into, directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. Rule 2a-7(a)(7). A "municipal issuer" is defined under the rule to mean a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. *Id.* A conduit security does not include a security that is: (i) fully and unconditionally guaranteed by a municipal issuer; (ii) payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer); (iii) related to a project owned and operated by a municipal issuer; or (iv) related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer. *Id.*

61 *See* OCC Guidance, *supra* note 56 (OCC credit risk factors for revenue bonds include consideration of the obligor's financial condition and reserve levels).

62 *See* 2010 Money Market Fund Adopting Release, *supra* note 41, at section II.A.3 (citing Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] ("1996 Money Market Fund Adopting Release") at section II.E.4).

63 A variable rate demand obligation (which includes variable rate demand notes) is a security for which the interest rate resets on a periodic basis and holders are able to liquidate their security through a "put" or "tender" feature, at par. To ensure that the securities are able to be "put" or "tendered" by a holder in the event that a remarketing agent is unable to remarket the security, a VRDO typically operates with a liquidity facility – a Letter of Credit or Standby Bond Purchase Agreement – that ensures that an investor is able to liquidate its position. *See* Electronic Municipal Market Access, Understanding Variable Rate Demand Obligations, http://emma.msrb.org/EducationCenter/UnderstandingVRDOs.aspx.

64 A tender option bond is an obligation that grants the bondholder the right to require the issuer or specified third party acting as agent for the issuer (*e.g.*, a tender agent) to purchase the bonds,

analysis of the issuer or obligor's financial condition, as described above, analysis of the protections for the money market fund provided by the legal structure of the security.[67]

- For repurchase agreements that are "collateralized fully" under rule 2a-7,[68] an assessment of the creditworthiness of the counterparty,[69] of the volatility and liquidity of the market for collateral, if the collateral is a government agency collateralized mortgage obligation or mortgage backed security, or other non-standardized security, and the process for liquidating collateral.[70]
- For repurchase agreements that are not fully collateralized under rule 2a-7, a financial analysis and assessment of the minimal credit risk of the counterparty, as described above, without regard to the value of the collateral, and consideration of the type of

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usually at par, at a certain time or times prior to maturity or upon the occurrence of specified events or conditions. *See* Municipal Securities Rulemaking Board, Glossary of Municipal Securities Terms, Tender Option Bond, http://www.msrb.org/glossary/definition/tender-option-bond.aspx. Tender option bonds are synthetically created by a bond dealer or other owner of a long-term municipal obligation purchased in either the primary or secondary markets, or already in a portfolio.

65 An extendible bond is a long-term debt security with an embedded option for either the investor or the issuer to extend its maturity date. To qualify as an eligible security under rule 2a-7, the issuer must not have the right to extend the maturity of the bond so that it is more than 397 days to maturity at any time. Typically, if an extendible bond is of the type that qualifies as an eligible security under rule 2a-7, a money market fund will have the option to either extend the maturity of the bond to no more than 397 days in the future, or elect not to extend, in which case the bond's maturity must be no longer than 397 days at that time.

66 A "step up" security pays an initial interest rate for the first period, and then a higher rate for the following periods.

67 *See* OCC Guidance, *supra* note 56 (OCC credit risk factors for structured securities include evaluation and understanding of specific aspects of the legal structure including loss allocation rules, potential impact of performance and market value triggers, support provided by credit and liquidity enhancements, and adequacy of structural subordination).

68 Under rule 2a-7(a)(5), for a repurchase agreement to be "collateralized fully," among other requirements, the collateral must consist entirely of cash items or Government securities. *See* rule 5b-3(c)(1).

69 *See* rule 2a-7(d)(3)(ii)(A) (requiring the fund's board of directors to evaluate the creditworthiness of the seller of a fully collateralized repurchase agreement when looking to the collateral issued for purposes of determining issuer's diversification under the rule).

70 *See* ICI WORKING GROUP REPORT, *supra* note 22, at Appendix I (" When repayment of an obligation (such as a repurchase agreement) may depend on the liquidation of securities or other assets (Collateral), the credit analysis should include an assessment of the volatility and liquidity of the market for the Collateral, especially in times of market stress. The analysis also should consider the process for liquidating the Collateral, who would be likely buyers of the Collateral, and how long it might take to complete the liquidation. These factors should be included in the analysis of the Collateral's potential volatility and liquidity.").

collateral accepted and the ability of the money market fund to liquidate the collateral.[71]

This list is not meant to be exhaustive. We recognize that the range and type of specific factors appropriate for consideration could vary depending on the category of issuer and particular security or credit enhancement under consideration, and may include any factors in addition to those discussed above that the board determines appropriate to the credit assessment.[72] Individual purchases may require more or less analysis depending on the security's risk characteristics. As discussed in greater detail below, we also would expect that the written record of the minimal credit risk determination generally would address any factors considered and the analysis of those factors.[73]

We request comment on the factors discussed above for consideration, as appropriate, in the determinations that portfolio securities present minimal credit risk. Do commenters agree that these are relevant factors for advisers to consider in assessing whether portfolio securities present minimal credit risk? Are the factors sufficiently clear? Would it be helpful to describe any of the factors with additional specificity? To what extent do investment advisers currently

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71 *See id.*

72 *See supra* text accompanying and following notes 55-70. As noted above, money market fund boards of directors typically delegate minimal credit risk determinations to the fund's adviser. *See supra* note 22. Rule 2a-7 requires money market fund boards to establish and periodically review written procedures regarding the delegation (including guidelines for determining whether securities present minimal credit risks) and to take measures reasonably necessary to assure that the guidelines and procedures are being followed. *See* rule 2a-7(j); *see also* rule 38a-1 (requiring funds to adopt and implement written policies and procedures reasonably designed to prevent a fund from violating the federal securities laws). These policies and procedures generally should identify the process to be followed by the adviser in performing credit assessments, including, as appropriate, the types of data to be used or factors to be considered with respect to particular securities and the person(s) or position(s) responsible under the delegated authority. They also generally should provide for regular reporting to the board, as appropriate, about these evaluations, to allow the board to provide effective oversight of the process. *See* 2013 Ratings Removal Adopting Release, *supra* note 4, at n.50; 1983 Adopting Release, *supra* note 14, at paragraph preceding paragraph accompanying n.3.

73 *See infra* section II.A.3; proposed rule 2a-7(h)(3).

consider these factors in making minimal credit risk determinations? Do commenters agree with our understanding that consideration of these factors is consistent with current industry practice? Are there factors we should omit or other factors we should consider including, such as credit spreads or the issuer or guarantor's risk management structure?[74] If so, why? In light of the amendments being considered in this re-proposal, would the guidance contribute to more consistency in the quality and breadth of money market funds' credit analyses? If so, would it reduce the potential for significant variations in money market funds' risk profiles?[75] Should the factors address other asset classes? If so, what types of securities should be included and what factors would be appropriate for consideration? We do not presently propose to codify the factors as part of rule 2a-7. We request comment, however, on whether codifying these factors would further ensure that funds use objective factors and market data in making credit quality determinations and thereby promote uniformity in making minimal credit risk determinations and/or assist money market fund managers in understanding their obligations pertaining to portfolio quality under rule 2a-7.

2. *Conditional Demand Features*

Rule 2a-7 limits money market funds to investing in securities with remaining maturities of no more than 397 days.[76] A long-term security subject to a conditional demand feature[77]

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74 These factors have been included in other guidance on making creditworthiness determinations. *See* 2013 Net Capital Rule Amendments, *supra* note 51; 1989 Staff Letter, *supra* note 52; OCC Guidance, *supra* note 56.

75 *See* Dreyfus Comment Letter, *supra* note 30.

76 *See* rule 2a-7(a)(12) (defining "eligible security" to mean, among other things, a security with a remaining maturity of 397 calendar days or less).

77 A conditional demand feature is a demand feature that a fund may be precluded from exercising because of the occurrence of a condition. *See* rule 2a-7(a)(6) (defining "conditional demand feature" as a demand feature that is not an unconditional demand feature); rule 2a-7(a)(30) and re-proposed rule 2a-7(a)(25) (defining "unconditional demand feature" as a demand feature that

("underlying security"), however, may be determined to be an eligible security (or a first tier security) if among other conditions: (i) the conditional demand feature is an eligible security or a first tier security; and (ii) the underlying security (or its guarantee) has received either a short-term rating or a long-term rating, as the case may be, within the highest two categories from the requisite NRSROs or is a comparable unrated security.[78] The rule currently requires this analysis of both the short-term *and* long-term credit aspects of the demand instrument because a security subject to a conditional demand feature combines both short-term and long-term credit risks.[79] Our re-proposal would require a similar analysis, but consistent with section 939A of the Dodd-Frank Act would remove the requirement in the rule that the fund board (or its delegate) consider credit ratings of underlying securities.[80]

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by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security). For purposes of rule 2a-7, a demand feature allows the security holder to receive, upon exercise, the approximate amortized cost of the security, plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise and upon no more than 30 calendar days' notice. Rule 2a-7(a)(9).

78 Rule 2a-7(d)(2)(iv). Although underlying securities are generally long-term securities when issued originally, they become short-term securities when the remaining time to maturity is 397 days or less.

79 The quality of a conditional demand instrument depends both on the ability of the issuer of the underlying security to meet scheduled payments of principal and interest and upon the availability of sufficient liquidity to allow a holder of the instrument to recover the principal amount and accrued interest upon exercise of the demand feature. *See* Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14607 (July 1, 1985) [50 FR 27982 (July 9, 1985)], at n.33. The rule permits the determination of whether a security subject to an unconditional demand feature is an eligible or first tier security to be based solely on whether the unconditional demand feature is an eligible or first tier security because credit and liquidity support will be provided even in the event of default of the underlying security. *See* rule 2a-7(d)(2)(iii).

80 In a conforming change, we propose to remove two provisions in current rule 2a-7 that reference credit ratings in connection with securities subject to a demand feature or guarantee of the same issuer that are second tier securities: rule 2a-7(d)(3)(i)(C) (limiting a fund's investments in securities subject to a demand feature or guarantee of the same issuer that are second tier securities to 2.5% of the fund's total assets); rule 2a-7(f)(1)(iii) (providing that if, as a result of a downgrade, more than 2.5% of a fund's total assets are invested in securities issued by or subject

Under our re-proposal, a fund would have to determine, as with any short-term security, that the conditional demand feature is an eligible security.[81] In addition, a fund's board of directors (or its delegate) would have to evaluate the long-term risk of the underlying security and determine that it (or its guarantor) "has a very strong capacity for payment of its financial commitments."[82] This standard is similar to those articulated by credit ratings agencies for long-term securities assigned the second-highest rating.[83] An issuer that the board determines has a very low risk of default, and a capacity for payment of its financial commitments that is not significantly vulnerable to reasonably foreseeable events would satisfy the proposed standard. We do not believe that securities that are rated in the third-highest category for long-term ratings (or comparable unrated securities), which have expectations of low credit risk or whose obligors have only a strong capacity to meet their financial commitments, would satisfy the proposed

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to demand features from a single institution that are second tier securities, a fund must reduce its investments in these securities to no more than 2.5% of total assets by exercising the demand feature at the next succeeding exercise date(s)). In other conforming changes, we are re-proposing to amend two rules under the Act that reference the definition of "demand feature" and "guarantee" under rule 2a-7, which references would change under our re-proposed amendments. Specifically, we propose to amend: (i) rule 12d3-1(d)(7)(v), to replace the references to "rule 2a-7(a)(8)" and "rule 2a-7(a)(15)" with "§ 270.2a-7(a)(9)" and "§ 270.2a-7(a)(16)"; and (ii) rule 31a-1(b)(1), to replace the phrase "(as defined in § 270.2a-7(a)(8) or § 270.2a-7(a)(15) respectively)" with "(as defined in § 270.2a-7(a))(9) or § 270.2a-7(a)(16) respectively)".

81 *See* re-proposed rule 2a-7(d)(2)(iii)(A).

82 Re-proposed rule 2a-7(d)(2)(iii)(C). An underlying security that is a short-term security (because its remaining maturity is less than 397 days, although its original maturity may have been longer) also would have to meet the re-proposed standard.

83 *See* Fitch Ratings Scales, *supra* note 38, at 12, 15 (for corporate finance obligations, "'AA' ratings denote expectations of very low credit risk. They indicate very strong capacity for payment of financial commitments;" for structured, project and public finance obligations, "'AA' ratings denote expectations of very low default risk. They indicate very strong capacity for payment of financial commitments."); Moody's Rating Definitions, *supra* note 38, at 5 (on the global long-term rating scale, obligations "rated Aa are judged to be of high quality and are subject to very low credit risk."); and S&P Ratings Definitions, *supra* note 38, at 3 ("An obligation rated 'AA' differs from the highest-rated obligations only to a small degree. The obligor's capacity to meet its financial commitment on the obligation is very strong.").

standard for underlying securities.[84] In making the credit quality determinations required under the re-proposed amendment, a fund adviser could continue to take into account analyses provided by third parties, including ratings provided by ratings agencies, that it considers reliable for such purposes.[85]

The amendments that we are re-proposing to the provisions of rule 2a-7 affecting securities subject to a conditional demand feature are designed to reflect the same standard as the amendment we proposed in 2011.[86] Specifically, in 2011, we proposed to remove the credit rating requirement from the rule 2a-7 provision setting forth the conditions under which a security subject to a conditional demand feature may be determined to be an eligible security and instead require that the fund's board (or its delegate) determine that the underlying security be of high credit quality and subject to very low credit risk.[87] The re-proposed standard differs in phrasing to more closely parallel the required finding in our re-proposed minimal risk determination.[88] Comments we received on the 2011 proposal all urged us to retain the requirement that a security subject to a demand feature has received at least a second tier rating, to limit the risk that a demand feature might terminate if its underlying security receives a rating below investment grade (*i.e.*, if the underlying security receives a downgrade of two ratings

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84 *See* Moody's Rating Definitions, *supra* note 38, at 5 (long-term obligations "rated A are judged to be upper-medium grade and are subject to low credit risk."); Fitch Ratings Scales, *supra* note 38, at 12 (long-term "A ratings denote expectations of low credit risk. The capacity for payment of financial commitments is considered strong."); S&P Ratings Definitions, *supra* note 38, at 4 (a long-term obligation "rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitment on the obligation is still strong.").

85 *See supra* paragraph following note 45.

86 *See* 2011 Proposing Release, *supra* note 4, at section II.A.2.

87 *See id.* at n.36 and accompanying text.

88 *See* Schwab Comment Letter, *supra* note 30 (querying whether different language for proposed descriptions of second tier securities was intended to suggest different standards).

categories under the current rule).[89]

The re-proposed amendments are consistent with section 939A of the Dodd-Frank Act regarding the removal of ratings. Nevertheless, we recognize the risks of a money market fund investing in securities whose eligibility as portfolio securities depends on a demand feature that would terminate if downgraded by a single rating category, and we believe it would be prudent for a money market fund to avoid investing in these securities. A downgrade of this type would result in the loss of the demand feature, which would render the security no longer eligible for the portfolio and expose the fund to the increased interest rate risk associated with a long-term security. For this reason, we would retain the current rule 2a-7 requirements that a security subject to a conditional demand feature is an eligible security only if at the time it is acquired, the fund's board (or the board's delegate) determines that there is minimal risk that the circumstances that would result in the conditional demand feature terminating will occur, and that either (i) the conditions limiting the demand feature's exercise can be monitored, or (ii) the fund otherwise receives notice of the occurrence of a limiting condition and the opportunity to exercise the demand feature in accordance with its terms.[90]

We request comment on our proposed credit quality standard for securities with a conditional demand feature. Do commenters believe that this is an appropriate standard of

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89 *See, e.g.*, Federated Comment Letter, *supra* note 30; Fidelity Comment Letter, *supra* note 31; ICI Comment Letter, *supra* note 30.

90 *See* re-proposed rule 2a-7(d)(2)(iii)(B) (providing that a security subject to a conditional demand feature is an eligible security only if, at the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and: (i) the conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or (ii) the terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms).

creditworthiness? Is it consistent with our goal of retaining a similar degree of risk limitation as in the current rule? Are there alternative standards that would provide a more robust or objective evaluation of credit quality for an underlying security? How should such criteria be applied and/or used? Are there alternative subjective standards that would provide meaningful distinctions among underlying securities? Is our understanding of a fund's ability to monitor for conditions that would terminate a demand feature correct? How do funds currently satisfy this monitoring condition? Are we correct in our assumption that removing references to ratings in the credit quality requirement for underlying securities is not likely to change fund investment policies significantly?

3. Monitoring Minimal Credit Risks

Rule 2a-7 currently requires a money market fund board (or its delegate) promptly to reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks, and take such action as it determines is in the best interests of the fund and its shareholders.[91] In addition, rule 2a-7 requires ongoing review of the minimal credit risks associated with securities for which maturity is determined by reference to a demand feature.[92]

In 2011, we proposed to amend the rule to require that, in the event the money market fund's adviser (or any person to whom the board has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the board (or its delegate) would have to reassess

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91 Rule 2a-7(f)(1)(i)(A). This current reassessment is not required, however, if the downgraded security is disposed of or matures within five business days of the specified event and in the case of certain events (specified in rule 2a-7(f)(1)(i)(B)), the board is subsequently notified of the adviser's actions. Rule 2a-7(f)(1)(ii).

92 Rule 2a-7(g)(3).

promptly whether the portfolio security continues to present minimal credit risks.[93]

Most of those who commented on this proposed amendment objected to it.[94] They asserted that the proposed standard is too vague and would be burdensome to administer.[95] A number of commenters recommended that we instead eliminate the requirement for reassessing minimal credit risk when a security is downgraded by an NRSRO and include a general ongoing obligation to monitor the credit risks of portfolio securities, which would eliminate the need for a separate requirement to identify specific triggers.[96]

We have carefully considered commenters' concerns and suggested modifications and have been persuaded to re-propose a different standard. In order to meet the requirements of section 939A of the Dodd-Frank Act, we re-propose to eliminate the requirement that a fund reassess credit risks of an issuer when a security is downgraded by an NRSRO.[97] In consideration of our re-proposed standard for credit quality, and consistent with the approach suggested by a number of commenters, we instead re-propose to require that each money market fund adopt written procedures that require the fund adviser to provide ongoing review of the credit quality of each portfolio security (including any guarantee or demand feature on which the fund relies to determine portfolio quality, maturity, or liquidity) to determine that the security

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93 *See* 2011 Proposing Release, *supra* note 4, at section II.A.3.

94 *But see* Comment Letter of CFA Institute (July 13, 2011) (supporting the proposed monitoring standard).

95 *See, e.g.,* ICI Comment Letter, *supra* note 30 (there are numerous sources of information about issuers, much of which is not relevant to the issuer's ability to meet its short-term obligations); Invesco Comment Letter, *supra* note 30 (the ambiguity in the terms "credible information" and "suggest" will complicate enforcement of the rule); Schwab Comment Letter, *supra* note 30 (the word "suggests" is not constrained by a reasonableness or likelihood standard).

96 *See, e.g.,* Federated Comment Letter, *supra* note 30; ICI Comment Letter, *supra* note 30; T. Rowe Price Comment Letter, *supra* note 30.

97 *See* rule 2a-7(f)(1).

continues to present minimal credit risks.[98] Ongoing monitoring of minimal credit risks would include the determination of whether the issuer of the portfolio security, and the guarantor or provider of a demand feature, to the extent relied upon by the fund to determine portfolio quality, maturity or liquidity, continues to have an exceptionally strong capacity to repay its short-term financial obligations.[99] The review would typically update the information that was used to make the initial minimal credit risk determination and would have to be based on, among other things, financial data of the issuer or provider of the guarantee or demand feature.[100] We note that funds could continue to consider external factors, including credit ratings, as part of the ongoing monitoring process.[101]

Although rule 2a-7 does not explicitly require ongoing monitoring of whether a security

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[98] Re-proposed rule 2a-7(g)(3). Our re-proposal would remove current rule 2a-7(f)(1)(i) (downgrades and rating below second tier previously unrated securities) and 2a-7(g)(3) (securities for which maturity is determined by reference to demand features). Re-proposed rule 2a-7 includes a new paragraph (g)(3), which would contain the required procedures for the ongoing review of credit risks.

[99] The re-proposal also would make conforming amendments to the recordkeeping provision related to the determination of credit risks, which among other things currently requires funds to retain a written record of the determination that a portfolio security presents minimal credit risks. *See* rule 2a-7(h)(3). As noted above, the re-proposal would require funds to retain a written record of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks. Re-proposed rule 2a-7(h)(3). Because under our re-proposal a fund adviser would be required to conduct an ongoing review of the credit quality of a fund's portfolio securities, rule 2a-7's current recordkeeping requirement could be understood to require the fund to provide for an ongoing documentation of the adviser's ongoing review, which could prove burdensome. Accordingly, our re-proposal would require the fund to maintain and preserve a written record of the determination that a portfolio security presents minimal credit risks at the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks. *See* re-proposed rule 2a-7(h)(3).

[100] *See* re-proposed rule 2a-7(g)(3)(ii). Currently, when a security's maturity is determined by reference to a demand feature, the board's review of the security's minimal credit risks must be based on, among other things, financial data for the most recent fiscal year of the issuer of a demand feature. *See* rule 2a-7(g)(3). A fund also should review any other factors considered as part of its initial minimal credit risk determination.

[101] *See infra* text following note 178 (discussing the Commission's belief that the majority of funds would continue to refer to credit ratings in making minimal credit risk determinations).

presents minimal credit risks, as a practical matter, we believe most fund advisers currently engage in similar types of ongoing monitoring because (i) funds regularly "roll over" positions in portfolio securities, which triggers the obligation to make a new minimal credit risk determination[102] (ii) rule 2a-7 requires funds to reassess whether a security presents minimal credit risks upon the occurrence of certain events[103] (iii) events such as downgrades can result in a decrease in the mark-to-market value of the fund portfolio, threatening the ability of the fund to maintain a stable net asset value[104] (iv) changes in credit ratings of a fund's portfolio securities may threaten the fund's own ability to maintain a rating from an NRSRO[105] and (v) shareholders may be more likely to redeem if the credit quality of portfolio securities declines.[106] We do not believe that the re-proposal for an explicit monitoring requirement would significantly change

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102 Funds must limit their portfolios to securities that, among other requirements, are eligible securities at the time of acquisition, which is defined to mean any purchase or subsequent rollover. Rules 2a-7(a)(1); 2a-7(d)(2).

103 Rule 2a-7(f)(1) (requiring a money market fund's board of directors to reassess promptly whether a security continues to present minimal credit risks if (i) a first tier portfolio security has been downgraded (or an unrated security is no longer of comparable quality to a first tier security), and (ii) the fund adviser becomes aware that any unrated security or second tier security has been given a rating below a second tier rating).

104 *See* rule 2a-7(g)(1).

105 *See, e.g.*, Moody's Investors Service, Moody's Revised Money Market Fund Rating Methodology and Symbols, Mar. 10, 2011, *available at* http://www.citibank.com/transactionservices/home/oli/files/moodys_03_10_2011.pdf (discussing the assessment of a money market fund's "Portfolio Credit Profile" as a part of Moody's methodology for rating money market funds).

106 *See, e.g.*, 2013 Money Market Fund Proposing Release, *supra* note 5, at text accompanying nn. 100-103; Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, a report by staff of the Division of Risk, Strategy, and Financial Innovation (Nov. 30, 2012), *available at* http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf, at 33 (noting that investors began redeeming government money market fund shares in July and August of 2011 when concerns about the U.S. debt ceiling impasse and possible rating downgrades of government securities may have fueled investor concerns); Report of the President's Working Group on Financial Markets, *Money Market Fund Reform Options* (Oct. 2010), *available at* http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf, at 12.

current fund practices in monitoring minimal credit risks in the portfolio. Moreover, we do not believe that the re-proposal to remove the credit reassessment requirement in the event of a downgrade would result in less diligence on the part of money market fund managers because, as discussed above, a decline in the quality of a fund's portfolio securities could affect a fund's own NRSRO rating and could increase shareholder redemptions.

We also note that a fund adviser's obligation to monitor risks to which the fund is exposed would, as a practical matter, require the adviser to monitor for downgrades by relevant credit rating agencies[107] because such a downgrade would likely affect the security's market value. Nevertheless, we acknowledge that one consequence of our proposal would be that a fund adviser could decide to keep a portfolio security that has been downgraded from second tier status without involving the fund's board in that decision. As part of its oversight of the adviser's investment decisions, however, we would expect that a fund board generally should establish procedures for the adviser to notify the board in such circumstances.[108]

For the reasons discussed above, we believe this re-proposed requirement to monitor credit risk would essentially codify the current practices of fund managers, which are already explicit (and implicit) in several provisions of the rule discussed above. Our re-proposal to explicitly require that funds perform ongoing monitoring of credit risks is designed to ensure that funds are better positioned to quickly identify potential risks of credit events that could impact portfolio security prices and ultimately, for certain funds, the ability of the fund to maintain its

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107 We use the term "relevant credit rating agencies" to mean those NRSROs whose downgrades would likely affect the value of a portfolio security.

108 *See* rule 2a-7(j)(2); rule 2a-7(g)(1) (requiring that for funds using amortized cost, the board, as part of its overall duty of care owed to its shareholders, adopt written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to maintain a stable net asset value per share).

stable net asset value.[109]

We request comment on the re-proposed monitoring requirement. Is our understanding of how funds currently monitor fund portfolio securities correct? If not, how are fund practices different? Would our proposed amendments, if adopted, impose additional or different costs on funds or their advisers, and if so, what would these costs be? Should the rule include specific objective events that would require a reevaluation of minimal credit risks? Would an explicit monitoring requirement change current fund priorities in monitoring minimal credit risks in the portfolio? Would the re-proposal assist funds to better position themselves to quickly identify potential risks of credit events that could impact portfolio security prices? Would replacing the credit reassessment requirement in the event of a downgrade with a requirement for ongoing monitoring result in less or more diligence on the part of money market fund managers? As a practical matter, would a fund adviser's obligation to monitor risks to which the fund is exposed likely require the adviser to monitor for downgrades by relevant credit ratings agencies, as well as monitor, for each portfolio security, each NRSRO rating considered as part of the minimal credit risk determination at the time the security was acquired? Are there any alternatives to the

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[109] As under the current rule, the process undertaken by the fund's board (or adviser) for establishing credit quality and the records documenting that process would be subject to review in regulatory examinations by Commission staff. *See* Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934, Securities Exchange Act Release No. 64352 (Apr. 27, 2011) [76 FR 26550 (May 6, 2011)], at text following n.30. In the context of such an examination, a fund should be able to support each minimal credit risk determination it makes in light of financial data or market data it has considered with appropriate documentation to reflect that process and determination. A fund that acquires portfolio securities without having adopted, maintained, or implemented written policies and procedures reasonably designed to assess minimal credit risk, as required under rules 2a-7 and 38a-1, could be subject to disciplinary action for failure to comply with those rules. *See id. See also* Ambassador Capital Management LLC, *et al.,* Investment Company Act Release No. 30809 (Nov. 26, 2013) (alleging that money market fund adviser's failure to (i) make and retain a written record of its minimal credit risk determinations resulted in the fund's violation of rule 22c-1 and (ii) follow the fund's compliance procedures regarding the determination of minimal credit risk and the maintenance of records of the determination resulted in the fund's violations of rule 38a-1).

re-proposed monitoring requirement that would permit funds to monitor minimal credit risks more effectively, or that would better reflect funds' current monitoring practices, than the re-proposed requirement?

4. Stress Testing

Money market funds currently must adopt written procedures for stress testing their portfolios and perform stress tests according to these procedures on a periodic basis.[110] Specifically, a fund must test its ability based on certain hypothetical events, including a downgrade of particular portfolio security positions, to: (i) have invested at least 10 percent of its total assets in weekly liquid assets; and (ii) minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing, the fund's ability to maintain a stable share price per share).[111] In 2011, we proposed to replace this reference to ratings downgrades with the requirement that money market funds stress test their portfolios for an adverse change in the ability of a portfolio security issuer to meet its short-term credit obligations.[112]

Commenters on the 2011 proposal who addressed this issue uniformly advocated against eliminating the reference to a downgrade in the stress testing conditions.[113] They argued that the Dodd-Frank Act does not prohibit regulations, such as this stress testing provision, that refer to credit ratings without requiring an assessment of a security's creditworthiness.

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110 *See* rule 2a-7(g)(8).

111 *See* rule 2a-7(g)(8)(i) (requiring written procedures providing for periodic stress testing in light of various events, including a "downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions"); 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.J.

112 *See* 2011 Proposing Release, *supra* note 4, at section II.A.4.

113 *See, e.g.,* Dreyfus Comment Letter, *supra* note 30; ICI Comment Letter, *supra* note 30.

In consideration of the comments we received and the mandate in section 939A of the Dodd-Frank Act, we re-propose to replace the reference to ratings downgrades in the stress testing requirement with a hypothetical event that is designed to have a similar impact on a money market fund's portfolio. Our re-proposed stress testing amendments would require that money market funds stress test for an event indicating or evidencing credit deterioration of particular portfolio security positions, each representing various exposures in a fund's portfolio.[114] The re-proposed amendments would describe the type of hypothetical event that funds should use for testing and include a downgrade or default as examples of that type of event. Thus, funds could continue to test their portfolios against a potential downgrade or default in addition to any other indication or evidence of credit deterioration they determine appropriate (and that might adversely affect the value or liquidity of a portfolio security).

We note that the 2013 Money Market Fund Reform Proposing Release requested comment on certain aspects of money market fund stress testing as it relates to our obligation under section 165(i)(2) of the Dodd-Frank Act to specify certain stress testing requirements for nonbank financial companies[115] that have total consolidated assets of more than $10 billion and are regulated by a primary federal financial regulatory agency.[116] As discussed in that release and the 2014 Money Market Fund Adopting Release, we intend to engage in a separate

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114 Re-proposed rule 2a-7(g)(8)(i)(B) (the re-proposal would require stress testing for an event indicating or evidencing the credit deterioration, such as a downgrade or default, of a portfolio security position representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions).

115 For a definition of "nonbank financial companies" for these purposes, *see* Definition of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company, Board of Governors of the Federal Reserve System [78 FR 20756 (Apr. 5, 2013)].

116 *See* 2013 Money Market Fund Proposing Release, *supra* note 5, at section III.L.

rulemaking to implement the requirements to section 165(i) of the Dodd-Frank Act.[117] We request comment on our re-proposed amendment to the stress testing requirements. Should the rule require testing against specifically named events rather than an event the fund chooses that indicates or evidences credit deterioration? Does the re-proposed hypothetical event provide adequate guidance to funds? Is there a different hypothetical event, other than a downgrade, that we should specify?

B. Form N-MFP

As part of the money market fund reforms adopted in 2010, money market funds must provide to the Commission a monthly electronic filing of portfolio holdings information on Form N-MFP.[118] The information that money market funds must disclose with respect to each portfolio security (and any guarantee, demand feature, or other enhancement associated with the portfolio security) includes the name of each designated NRSRO for the portfolio security and the rating assigned to the security.[119]

In 2011, we proposed to eliminate the form items that currently require a fund to identify whether a portfolio security is a first tier or second tier security or is an unrated security, and that require the fund to identify the "requisite NRSROs" for each security (and for each demand feature, guarantee or other credit enhancement). Several commenters strongly objected to

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117 *See id.* at section III.L; 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.J.5.

118 *See* rule 30b1-7; *see also* 2010 Money Market Fund Adopting Release, *supra* note 41, at n.301 and accompanying and preceding text.

119 *See* Form N-MFP Items 34 (requiring disclosure of each designated NRSRO for a portfolio security and the credit rating given by the designated NRSRO for each portfolio security); 37b-c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security demand feature); 38b-c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security guarantee); and 39c-d (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security enhancement).

removing ratings disclosures in Form N-MFP. They argued that the Dodd-Frank Act does not require us to eliminate these disclosures because these references to ratings do not require the use of an assessment of creditworthiness.[120] We have carefully considered these comments and are re-proposing instead to require that each money market fund disclose, for each portfolio security, (i) each rating assigned by any NRSRO if the fund or its adviser subscribes to that NRSRO's services, as well as the name of the agency providing the rating, and (ii) any other NRSRO rating that the fund's board of directors (or its delegate) considered in making its minimal credit risk determination, as well as the name of the agency providing the rating.[121] The first prong of this requirement reflects our assumption that a fund manager subscribes to the services of a particular NRSRO because the manager has confidence in that NRSRO's analysis and, therefore, when assessing the credit quality of a portfolio security, would consider any rating the NRSRO assigns to the security. If a fund's adviser has considered more than one NRSRO rating in making a minimal credit risk determination for a particular portfolio security, the Form N-MFP disclosure would need to reflect each rating considered (in addition to each rating assigned by an NRSRO if the fund or its adviser subscribes to its services). If the fund and its adviser subscribe to no NRSRO ratings services, and no other rating was considered in making a minimal credit risk determination, the fund would disclose no rating for the portfolio security. We believe this information on ratings may be useful both to the Commission and to investors to monitor credit ratings that funds use in evaluating the credit quality of portfolio securities and to evaluate risks

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120 *See, e.g.*, Federated Comment Letter, *supra* note 30; Dreyfus Comment Letter, *supra* note 30.

121 *See* re-proposed Form N-MFP Item C.10. In a conforming change, the re-proposal would also amend Form N-MFP Item C.9 to require disclosure of whether the portfolio security is an eligible security.

that fund managers take.[122] Disclosures of individual portfolio securities ratings would provide investors, Commission staff, and others with a snapshot of potential trends in a fund's overall risk profile, which could in turn prompt those monitoring to research or evaluate further whether that profile is changing.

We seek comment on the re-proposed disclosures relating to credit ratings in Form N-MFP. Are we correct in our assumption that as part of its minimal credit risk determination a fund manager would consider each rating assigned to a portfolio security by an NRSRO to whose services the fund or the manager subscribes? Would the proposed disclosures assist investors in monitoring credit risks in money market fund portfolios? Would the disclosures be more useful if they required funds that consider any rating to disclose the highest and lowest rating assigned to the portfolio security, regardless of whether the fund considered that rating? Should fund managers that consider more than one credit rating in their credit evaluations be required to disclose only one rating and its source? Would disclosure of only one rating limit an investor's ability to monitor the fund's credit risk if another rating assigned to a portfolio security differs from the rating disclosed by the fund in Form N-MFP (*i.e.*, the security is split-rated)? Under such an approach, if a portfolio security is split-rated, which rating should the fund have to disclose, or should a fund be able to choose the rating it discloses? If a fund could choose, would any funds disclose a lower rating assigned by an NRSRO? We took a similar approach in recent amendments removing the required use of credit ratings in Forms N-1A, N-2 and N-3. Under those amendments, funds that choose to use credit quality to present their portfolio securities in shareholder reports and use credit ratings to depict credit quality may use

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122 *See* Comment Letter of BlackRock, Inc. (Apr. 25, 2011) ("BlackRock Comment Letter") ("this disclosure facilitates investors' ability to evaluate [money market fund] portfolios and to compare [money market funds] to each other.").

credit ratings assigned by different rating agencies (including credit rating agencies that are not NRSROs), provided that the fund also describes how it determines the credit quality of portfolio holdings and how ratings are identified and selected.[123] Would a similar disclosure describing how a money market fund determines the credit quality of portfolio holdings, including how ratings are identified and selected be appropriate considering the format of Form N-MFP? If not, would disclosure in another form, such as Form N-1A, appropriately mitigate the risk that a fund could "cherry-pick" the rating to disclose on Form N-MFP? Would investors find disclosure about the source of the credit rating to be useful information?

C. Exclusion from the Issuer Diversification Requirement

In addition to the provisions regarding credit quality discussed above, rule 2a-7's risk limiting conditions require a money market fund's portfolio to be diversified, both as to the issuers of the securities it acquires and providers of guarantees and demand features related to those securities.[124] Generally, money market funds must limit their investments in the securities of any one issuer of a first tier security (other than government securities) to no more than 5 percent of total assets.[125] They must also generally limit their investments in securities subject

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123 Form N-1A Item 27(d); Form N-2 Item 24, Instruction 6(a); Form N-3 Item 28(a), Instruction 6(i); *see also* 2013 Ratings Removal Adopting Release, *supra* note 4, at section III.B.

124 *See* rule 2a-7(d)(3). The diversification requirements of rule 2a-7 differ in significant respects from the requirements for diversified management investment companies under section 5(b)(1) of the Investment Company Act. A money market fund that satisfies the applicable diversification requirements of paragraph (d)(3) of rule 2a-7 is deemed to have satisfied the requirements of section 5(b)(1). Rule 2a-7(d)(3)(v). Subchapter M of the Internal Revenue Code contains other diversification requirements for a money market fund to be a "regulated investment company" for federal income tax purposes. 26 U.S.C. 851 *et seq.*

125 Rule 2a-7(d)(3)(i)(A) and (B). A single state fund, however, may invest up to 25% of its total assets in the first tier securities of any single issuer. Rule 2a-7(d)(3)(i)(B). A fund also may invest no more than 0.5% of fund assets in any one issuer of a second tier security. Rule 2a-7(d)(3)(i)(C). The rule provides a safe harbor under which a taxable and national tax-exempt fund may invest up to 25% of its total assets in the first tier securities of a single issuer for a

to a demand feature or a guarantee to no more than 10 percent of total assets from any one provider.[126] We adopted these requirements in order to limit the exposure of a money market fund to any one issuer, guarantor, or demand feature provider.[127]

By permitting money market funds a higher 10 percent limit on their indirect exposures to a single provider of a guarantee or demand feature than the 5 percent limit on direct investments in any one issuer, rule 2a-7 permits a money market fund to take on greater indirect exposures to providers of demand features and guarantees. That is because, rather than looking solely to the issuer, the money market fund would have two potential sources of repayment—the issuer whose securities are subject to the demand features or guarantees and the providers of those features or guarantees if the issuer defaults. Both the issuer and the demand feature provider or guarantor would have to default at the same time for the money market fund to suffer a loss. And if a guarantor or demand feature provider were to come under stress, the issuer may

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period of up to three business days after acquisition (but a fund may use this exception for only one issuer at a time). Rule 2a-7(d)(3)(i)(A). Under our re-proposal, which would eliminate the distinction between first and second tier securities, the issuer diversification requirements would apply regardless of a portfolio security's rating and the safe harbor would be available with respect to any portfolio security regardless of its rating. *See supra* note 36.

126 Rule 2a-7 also provides a "fifteen percent basket" for tax-exempt (including single-state) money market funds, under which as much as 15% of the value of securities held in a tax-exempt fund's portfolio may be subject to guarantees or demand features from a single institution. *See* rule 2a-7(d)(3)(iii)(B). The tax-exempt fund, however, may only use the 15% basket to invest in demand features or guarantees issued by non-controlled persons that are first tier securities. *See* rule 2a-7(c)(4)(iii)(B) and (C). Under our re-proposal, the 15% basket would be available with respect to any demand feature or guarantee issued by a non-controlled person without regard to the rating of the security, guarantee or demand feature. *See supra* note 36.

127 *See* Money Market Fund Reform, Investment Company Act Release No 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] ("2009 Money Market Fund Proposing Release") at n.220 and accompanying text; Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 (July 17, 1990) [55 FR 30239 (July 25, 1990)], at text accompanying n.23 ("Diversification limits investment risk to a fund by spreading the risk of loss among a number of securities.").

be able to obtain a replacement.[128]

Today, we adopted amendments to certain provisions of these diversification requirements in the 2014 Money Market Fund Adopting Release.[129] Among other things, our amendments require that money market funds treat certain entities that are affiliated with each other as single issuers when applying the 5 percent issuer diversification provision of rule 2a-7 and treat the sponsors of asset-backed securities as guarantors subject to the 10 percent diversification provision of rule 2a-7 applicable to guarantees and demand features, unless the fund's board makes certain findings. These amendments were intended to increase the resiliency of and reduce risk in money market funds by limiting their ability to concentrate investments in a single economic enterprise.

When we proposed these amendments, we also discussed and sought comment on additional alternatives that we had considered to appropriately limit money market funds' risk exposure.[130] These alternatives included requiring money market funds to be more diversified by reducing the current 5 percent and 10 percent diversification thresholds of rule 2a-7 and by imposing industry concentration limits. Several commenters supported some of these tighter diversification requirements.[131] One of these commenters suggested limiting any one corporate issuer to 2.5 percent of the fund's total assets rather than the current 5 percent issuer

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128 *See, e.g.*, Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No.19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] at n.83 and accompanying text (observing that, if the guarantor of one of the money market fund's securities comes under stress, "issuers or investors generally can either put the instrument back on short notice or persuade the issuer to obtain a substitute for the downgraded institution").

129 *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at section III.I.*1*.d.

130 *See* 2013 Money Market Fund Proposing Release, *supra* note 5, at sections III.J.1 – 2.

131 *See* Comment Letter of Eric S. Rosengren, President, Federal Reserve Bank of Boston, et al. (Sept. 12, 2013) ("Boston Federal Reserve Comment Letter"); Comment Letter of Robert Comment, Ph.D. (Jun. 14, 2013) ("R. Comment Comment Letter"); Comment Letter of John C. Barber, KeyBank, NA (Sept. 16, 2013) ("J. Barber Comment Letter").

diversification requirement, while two others supported additional sector diversification requirements.[132] Others, however, argued against further narrowing the diversification provisions of rule 2a-7 relating to issuers and guarantors.[133]

We also asked in the 2013 Money Market Fund Proposing Release more generally whether we should continue to distinguish between a fund's exposure to guarantors and issuers by providing different diversification requirements for these exposures.[134] We explained that rule 2a-7 permits a money market fund, when determining if a security subject to a guarantee satisfies the credit quality standards, to rely exclusively on the credit quality of the guarantor.[135] We specifically asked whether the guarantor should be treated as the issuer and subject to a 5 percent diversification requirement whenever the money market fund is relying exclusively on the credit quality of the guarantor. No commenters specifically addressed this issue, and we decided not to propose amendments that would implement this approach, or any of the alternative diversification approaches about which we sought comment as discussed above.

In considering the comments we received on the proposed amendments to the

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132 *See* J. Barber Comment Letter, *supra* note 131 (recommending 2.5% issuer limit); R. Comment Comment Letter, *supra* note 131 (advocating sector diversification); Boston Federal Reserve Comment Letter, *supra* note 131 (same).

133 Comment Letter of Phillip S. Gillespie, Executive Vice President and General Counsel, State Street Global Advisors (Sept. 17, 2013) (opposing the additional alternatives because existing diversification limits are already challenging due to the short-term market's current supply structure); Comment Letter of Investment Company Institute (Sept. 17, 2013) ("ICI 2013 Comment Letter"). One of these expressed concern that further restricting diversification limits may potentially force money market funds to invest in less creditworthy issuers, which could have the effect of increasing the risk within money market funds' portfolios, rather than decreasing it. *See id.*

134 *See* 2013 Money Market Fund Proposing Release, *supra* note 5, at sections III.J.1 – 2.

135 Rule 2a-7(d)(2)(iii). That a money market fund has both the issuer and guarantor as sources of repayment may not meaningfully reduce the risks of the investment in all cases because the issuer of the guaranteed securities need not satisfy rule 2a-7's credit quality requirements, and if the issuer of the guaranteed securities is of lesser credit quality, allowing the money market fund to have up to 10% of its assets indirectly exposed to the guarantor may not be justified.

diversification provisions and the alternatives discussed above, we noted that money market funds also may effectively rely exclusively on the credit quality of certain guarantors for purposes of the diversification requirements. Notwithstanding the 5 percent issuer diversification provision, rule 2a-7 does not require a money market fund to be diversified with respect to issuers of securities that are subject to a guarantee by a non-controlled person.[136] This exclusion could allow, for example, a fund to invest a significant portion or all of the value of its portfolio in securities issued by the same entity if the securities were guaranteed by different non-controlled person guarantors such that none guaranteed securities with a value exceeding 10 percent of the fund's total assets. By diversifying solely against the guarantor, the fund could be relying on the guarantors' credit quality or repayment ability, not the issuer's. Thus, the fund would effectively substitute the credit of the guarantor for that of the issuer for diversification purposes, without imposing the tighter 5 percent requirement that rule 2a-7 generally applies for issuer diversification. The fund also would have a highly concentrated portfolio and would be subject to substantial risk if the single issuer in whose securities it had such a significant investment were to come under stress or default.

We are concerned that a money market fund relying on the exclusion from the issuer diversification provision need only comply with the 10 percent guarantor diversification requirement, notwithstanding the credit substitution discussed above. In consideration of our reform goal of limiting concentrated exposure of money market funds to particular economic enterprises, we no longer believe that ignoring a fund's exposure to the issuer in these

[136] Rule 2a-7(d)(3)(i). A guarantee issued by a non-controlled person means a guarantee issued by: (i) a person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee; or (ii) a sponsor of a special purpose entity with respect to an asset-backed security. Rule 2a-7(a)(19). Control has the same meaning as in section 2(a)(9) of the Investment Company Act, 15 U.S.C. 80a-2(a)(9).

circumstances is appropriate.[137] Rather than subject these guarantors to a unique 5 percent requirement, however, we believe that a better approach would be to restrict risk exposures to all issuers of securities subject to a guarantee or demand feature under rule 2a-7 in the same way. That is, under today's proposed amendment, each money market fund that invests in securities subject to a guarantee (whether or not the guarantor is a non-controlled person) would have to comply with both the 10 percent diversification requirement for the guarantor as well as the 5 percent diversification requirement for the issuer. As a result, except for the special provisions regarding single-state money market funds, no money market fund non-government portfolio security would be excluded from rule 2a-7's limits on issuer concentration.

We recognize that the proposed removal of this exclusion and tightening of issuer diversification requirements for securities subject to a guarantee by a non-controlled person could impact issuers of these securities and the fund's risk profile (although we note that fewer than 2 percent of money market funds appear to be relying on this exclusion).[138] The proposed amendments could occasionally prevent some issuers from selling securities to a money market fund that would otherwise invest in the issuer's securities above the 5 percent diversification requirement. In addition, while we recognize that removing the exclusion could cause some money market funds to invest in securities with higher credit risk, we note that a money market

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137 *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at text following n.1600 and accompanying n.1601. The exclusion from the 5% issuer diversification requirement for certain guaranteed securities was adopted in the 1996 money market fund amendments to provide flexibility in municipal investments, and was premised on the ability of a money market fund to rely on the guarantee if an issuer became distressed. *See* 1996 Money Market Fund Adopting Release, *supra* note 62. Since 1996, our amendments have generally scaled back on the amount of additional flexibility focused on the municipal markets, particularly where money market funds do not heavily rely on the exclusion. *See, e.g.*, 2010 Money Market Fund Adopting Release, *supra* note 41.

138 *See infra* section V.C.2.

fund's portfolio securities must meet certain credit quality requirements, such as posing minimal credit risks, as discussed above.[139] We therefore believe that the substantial risk limiting provisions of rule 2a-7 would mitigate the potential that these money market funds would significantly increase their investments in securities with higher credit risk. We also believe that eliminating this exclusion would more appropriately limit money market fund risk exposures by limiting the concentration of exposure that a money market fund could have otherwise had to a particular issuer.[140]

We request comment on our proposal to eliminate the exclusion from the issuer diversification requirement. Do commenters agree with our approach to treat securities subject to a guarantee by a non-controlled person similar to other securities with a guarantee or demand feature under rule 2a-7? Should we instead, as discussed above, require that a guarantor be treated as the issuer and subject to a 5 percent diversification requirement when a money market fund is relying exclusively on the credit quality of the guarantor or when the security need not meet the issuer diversification requirements? Or should we impose a higher limit on issuer exposure when the security is guaranteed by a non-controlled person? If so, what would be an appropriate limit? For example, would a 10 percent, 15 percent, or some other limit be appropriate? What limit would appropriately balance the interests discussed above – allowing greater flexibility for funds with respect to indirect exposures to providers of guarantees and demand features because of the potential that tighter diversification provisions could lead to investments in lower quality securities and limiting exposure risk when a fund is relying solely on such a provider for repayment? Could commenters provide empirical analysis to support a

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139 *See* rule 2a-7(d)(2) (portfolio quality); *supra* notes 20-24 and accompanying text.

140 *See infra* section V.C.2.

particular percentage? Do commenters agree with our understanding that most money market funds do not currently rely on the issuer diversification exclusion for securities subject to a guarantee issued by a non-controlled person? Do commenters believe that many money market funds have used this exclusion in the past or may do so in the future absent our proposed amendment? We note that most of the funds whose portfolios have greater than 5 percent exposure to an issuer are tax-exempt funds, and that most of these funds exceed the 5 percent threshold by less than 2 percent of fund assets. In addition, none of the funds that appear to have relied on the exclusion is a single state fund.[141] As a result, we have assumed that tax-exempt funds do not need this exclusion. Is this assumption correct? Is the supply of high quality eligible municipal investments sufficiently limited such that we should preserve the exclusion for tax-exempt or single state funds? Are there any other particular types of funds for which the current exclusion from the issuer diversification requirement should be preserved? Is the proposed amendment likely to result in money market funds investing in securities that present higher credit risk, or not, given the credit quality requirements of rule 2a-7?

III. Compliance Period for the Proposed Rule and Form Amendments

We anticipate that the compliance date for the re-proposed amendments to rule 2a-7 and Form N-MFP and the proposed amendments to the issuer diversification requirements would be [INSERT DATE 18 MONTHS AFTER JULY 2014 MONEY MARKET FUND RULES' EFFECTIVE DATE]. We expect that this compliance date should provide an adequate period of time for money market funds to review and revise their policies and procedures for complying with rule 2a-7, as funds deem appropriate in connection with the re-proposed and proposed

141 As noted above, rule 2a-7 currently permits a single state fund to invest up to 25% of its assets in any single issuer, thus these funds appear not to need the exclusion. *See supra* note 125.

amendments, if adopted.[142] We note that this compliance date would coincide with the compliance date for the rule 2a-7 amendments relating to diversification and stress testing adopted in the 2014 Money Market Fund Adopting Release, as well as the Form N-MFP amendments also adopted in that release. As discussed below, we believe that coordinating the compliance date of the re-proposed amendments with the compliance date of certain related amendments adopted in the 2014 Money Market Fund Adopting Release should reduce costs to the extent feasible by consolidating changes to be made to a fund's policies and procedures, as well as changes to Form N-MFP, at a single time.[143] We request comment on this compliance date.

IV. Paperwork Reduction Act Analysis

Certain provisions of our proposal contain "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[144] The titles for the existing collections of information are: (1) "Rule 2a-7 under the Investment Company Act of 1940, Money market funds" (OMB Control No. 3235-0268); (2) "Rule 30b1-7 under the Investment Company Act of 1940, Monthly report for money market funds" (OMB Control No. 3235-0657); and (3) "Form N-MFP under the Investment Company Act of 1940, Monthly schedule of portfolio holdings of money market funds" (OMB Control No. 3235-0657). The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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142 *See infra* note 219 and accompanying text.

143 *See infra* note 233 and accompanying text.

144 44 U.S.C. 3501-3520.

The agency has submitted the proposed collections of information to OMB for approval. Comments on the proposed collections of information should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, or by sending an e-mail to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-07-11, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549-2736.

A. Rule 2a-7

As discussed above, we are re-proposing to remove references to credit ratings in rule 2a-7, which would affect five elements of the rule: (i) determination of whether a security is an eligible security; (ii) determination of whether a security is a first tier security; (iii) credit quality standards for securities with a conditional demand feature; (iv) requirements for monitoring securities for ratings downgrades and other credit events; and (v) stress testing. These amendments involve collections of information, and the respondents to the collections of information are money market funds. This collection of information would be mandatory for money market funds that rely on rule 2a-7, and to the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.[145]

1. Eligible Security Determinations for Money Market Fund Portfolio Securities, Including Securities That Are Subject to a Conditional Demand Feature

Rule 2a-7 limits a money market fund's portfolio investments to "eligible securities," which are currently defined as securities that have received credit ratings from a requisite NRSRO in one of the two highest short-term rating categories, or comparable unrated securities.[146] The rule also restricts money market fund investments to securities that the fund's board, or its delegate, determines present minimal credit risks, and requires a fund to adopt policies and procedures regarding minimal credit risk determinations.[147] As discussed above, we are re-proposing amendments to rule 2a-7 that would remove any reference to, or requirement of reliance on, credit ratings in rule 2a-7 and modify the credit quality standard to be used in determining the eligibility of a money market fund's portfolio securities, including securities that are subject to a conditional demand feature. Specifically, the re-proposed amendments would eliminate the current requirement that an eligible security be rated in one of the two highest short-term rating categories by an NRSRO or be of comparable quality, and would combine the current "first tier" and "second tier" credit risk categories into a single standard, which would be included as part of rule 2a-7's definition of eligible security. A security would be an eligible security only if the money market fund's board of directors (or its delegate) determines that it

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145 *See, e.g.*, 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8)).

146 *See* rule 2a-7(a)(12).

147 *See* rules 2a-7(d)(2)(i); 2a-7(j)(1); 38a-1.

presents minimal credit risks, which determination would include a finding that the security's issuer has an exceptionally strong capacity to meet its short-term obligations.[148] The re-proposed amendments also would require that, with respect to a security (or its guarantee) subject to a conditional demand feature, the underlying security (or its guarantee) must have a very strong capacity for payment of its financial commitments.[149]

Money market funds are required to have written policies and procedures regarding minimal credit risk determinations.[150] Thus, each money market fund complex would incur one-time costs to comply with these re-proposed amendments, if adopted. Specifically, each fund complex would incur costs to review the amended provisions of rule 2a-7 and, as it determines appropriate in light of the re-proposed amendments, revise its policies and procedures to incorporate the amended credit quality standards to be used in determining the eligibility of a money market fund's portfolio securities, including securities that are subject to a conditional demand feature. As discussed below, we anticipate that many funds are likely to retain their investment policies as currently required under rule 2a-7, which incorporate NRSRO ratings and which would be permitted under the re-proposed rule amendments.[151] Some funds, on the other hand, may choose to revise their investment policies to remove references to NRSRO ratings and to incorporate the standards provided in the re-proposal, if adopted. Even if funds choose to eliminate references to ratings in their investment policies, funds' investment policies may not change substantially, as funds are already required to assess credit quality apart from ratings as

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148 Re-proposed rule 2a-7(a)(11); *see supra* section II.A.1.

149 Re-proposed rule 2a-7(d)(2)(iii)(C); *see supra* section II.A.2.

150 *See* rule 2a-7(j)(1); *supra* note 22.

151 *See infra* note 204 and accompanying paragraph.

part of their minimal credit risk determinations.[152] In addition to revisions concerning NRSRO ratings, some funds may choose to revise their policies and procedures to address certain factors discussed above (to the extent those factors are not considered currently) in their credit assessment policies and procedures.

While we cannot predict with precision the extent to which funds may revise their policies and procedures for determining minimal credit risk, we estimate that each money market fund complex on average would incur a one-time burden of 9 hours,[153] at a cost of $2,838,[154] to review and revise, as appropriate, its policies and procedures. Using an estimate of 84 money market fund complexes,[155] we estimate that money market funds would incur, in aggregate, a total one-time burden of 756 hours,[156] at a cost of $238,392,[157] to comply with the amended provisions of rule 2a-7 modifying the credit quality standard to be used in determining the

152 *See* rule 2a-7(d)(2)(i).

153 We estimate that the lower range of the one-time hour burden for a money market fund complex to review and revise, as appropriate, its policies and procedures for determining minimal credit risk would be 6 hours (4 hours by a compliance manager, and 2 hours by an attorney). We estimate that the upper range of the one-time hour burden for a money market fund complex to review and revise, as appropriate, its policies and procedures for determining minimal credit risk would be 12 hours (8 hours by a compliance manager, and 4 hours by an attorney). For purposes of our estimates for the PRA analysis, we have taken the mid-point of this range (mid-point of 6 hours and 12 hours = 9 hours (6 hours by a compliance manager, and 3 hours by an attorney)).

154 This estimate is based on the following calculation: (6 hours (mid-point of 4 hours and 8 hours incurred by a compliance manager) x $283 (rate for a compliance manager) = $1,698) + (3 hours (mid-point of 2 hours and 4 hours incurred by an attorney) x $380 (rate for an attorney) = $1,140) = $2,838. All estimated wage figures discussed here and throughout this Release are based on published rates that have been taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, available at http://www.sifma.org/research/item.aspx?id=8589940603, modified by Commission staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

155 Based on data from Form N-MFP and iMoneyNet data as of February 28, 2014.

156 This estimate is based on the following calculation: 9 hours x 84 money market fund complexes = 756 hours.

157 This estimate is based on the following calculation: $2,838 x 84 money market fund complexes = $238,392.

eligibility of a fund's portfolio securities. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market fund complexes of 252 hours[158] at a cost of $79,464.[159] We do not believe that funds would newly implement or change any annual review of policies and procedures that they currently perform as a result of the re-proposed amendments. There would be no external costs associated with this collection of information.

2. *Monitoring Minimal Credit Risks*

Rule 2a-7 currently requires a money market fund board (or its delegate) promptly to reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks.[160] As discussed above, we are re-proposing amendments to rule 2a-7 that would eliminate the current use of credit ratings in the rule's downgrade and default provisions. Rule 2a-7 instead would require a money market fund to adopt written procedures requiring the fund adviser, or any person to whom the fund's board of directors has delegated portfolio management responsibilities, to provide ongoing review of each portfolio security to determine that the issuer continues to present minimal credit risks.[161] To comply with these re-proposed amendments, if adopted, a fund complex would incur one-time costs to review the amended provisions of rule 2a-7 and adopt policies and procedures providing for ongoing review to determine whether a money market fund's portfolio securities continue to present minimal credit risks. Money market funds are not currently required to maintain policies and procedures that specifically address ongoing minimal credit risk monitoring. Although we understand, based on

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158 This estimate is based on the following calculation: 756 hours ÷ 3 years = 252 hours.

159 This estimate is based on the following calculation: $238,392 ÷ 3 years = $79,464.

160 *See* rule 2a-7(f)(1)(i).

161 Re-proposed rule 2a-7(g)(3); *see supra* section II.A.3.

staff experience, that most money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis,[162] we are assuming that all money market fund complexes would need to adopt new written policies and procedures to provide for this ongoing review in order to comply with the amended provisions of rule 2a-7.

We estimate that each money market fund complex on average would incur a one-time burden of 5 hours,[163] at a cost of $3,619,[164] to adopt policies and procedures for ongoing review of minimal credit risks. Using an estimate of 84 money market fund complexes,[165] we estimate that money market funds would incur, in aggregate, a total one-time burden of 378 hours,[166] at a

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162 *See supra* notes 102-106 and accompanying text.

163 These hour estimates assume that the process of adopting written policies and procedures will consist primarily of transcribing and reviewing any existing policies and procedures that funds currently use when monitoring minimal credit risk on an ongoing basis. Because we cannot predict the extent to which funds may need to develop these policies and procedures to comply with the amended provisions of rule 2a-7, if adopted, or may need to transcribe and review any existing policies and procedures, we have taken, as an estimated average burden, the mid-point of a range of hour estimates discussed below in this note 163 for purposes of our PRA analysis.

We estimate that the lower range of the one-time hour burden for a money market fund complex to adopt policies and procedures for ongoing review to determine whether a money market fund's portfolio securities continue to present minimal credit risks would be 3.5 hours (2 hours by a compliance manager and 1 hour by an attorney to develop and review policies and procedures (or transcribe and review pre-existing policies and procedures) + 0.5 hours for the fund's board to adopt the policies and procedures). We estimate that the upper range of the one-time hour burden for a money market fund complex to adopt such policies and procedures would be 6.5 hours (4 hours by a compliance manager and 2 hours by an attorney to develop and review policies and procedures (or transcribe and review pre-existing policies and procedures) + 0.5 hours for the fund's board to adopt the policies and procedures). The mid-point of the lower range estimate and the upper range estimate is 5 hours.

164 This estimate is based on the following calculation: (3 hours (mid-point of 2 hours and 4 hours incurred by a compliance manager) x $283 (rate for a compliance manager) = $849) + (1.5 hours (mid-point of 1 hour and 2 hours incurred by an attorney) x $380 (rate for an attorney) = $570) + (0.5 hours x $4,400 per hour for a board of 8 directors = $2,200)= $3,619. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,400.

165 Based on data from Form N-MFP and iMoneyNet data as of February 28, 2014.

166 This estimate is based on the following calculation: 4.5 hours x 84 money market fund complexes

cost of $303,996,[167] to comply with the amended provisions of rule 2a-7. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market fund complexes of 126 hours[168] at a cost of $101,332.[169] There would be no external costs associated with this collection of information.

3. Stress Testing

Rule 2a-7 currently requires money market funds to adopt written stress testing procedures and to perform stress tests according to these procedures on a periodic basis.[170] We are re-proposing amendments to rule 2a-7 that would replace the reference to ratings downgrades in the rule's stress testing provisions with a hypothetical event that is designed to have a similar impact on a money market fund's portfolio.[171] The re-proposed amendment is designed to retain a similar standard for stress testing as under current rule 2a-7. Specifically, while rule 2a-7 currently requires a fund to stress test its portfolio based on certain hypothetical events, including a downgrade of portfolio securities, the re-proposed amendment would require a fund to stress test for an event indicating or evidencing credit deterioration in a portfolio security, and would include a downgrade or default as examples of that type of event. As discussed below, we recognize that a money market fund could use its current policies and procedures to comply with the re-proposed amendment, and could continue to use credit quality evaluations prepared by

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= 378 hours.

167 This estimate is based on the following calculation: $3,619 x 84 money market fund complexes = $303,996.

168 This estimate is based on the following calculation: 378 hours ÷ 3 years = 126 hours.

169 This estimate is based on the following calculation: $303,996 ÷ 3 years = $101,332.

170 *See* rule 2a-7(g)(8).

171 Re-proposed rule 2a-7(g)(8)(i)(B); *see supra* section II.A.4.

outside sources, including NRSRO downgrades, in stress tests.[172] Because the rule currently requires testing for a downgrade as a hypothetical event, we do not believe that funds would take any additional time to review and revise their policies and procedures with respect to the continued use of downgrades in stress testing. Accordingly, we do not expect the proposed amendments would significantly change current collection of information burden estimates for rule 2a-7.[173]

Total Burden for Rule 2a-7. The current approved collection of information for rule 2a-7 is 517,228 annual aggregate hours.[174] The aggregate additional burden hours associated with the re-proposed amendments to rule 2a-7 increase the burden estimate to 517,606 hours annually for all funds.[175]

4. *Request for Comment*

We request comment on these assumptions and estimates. If commenters believe these assumptions or estimates are not accurate, we request they provide specific data that would allow us to make more accurate estimates.

B. Rule 30b1-7 and Form N-MFP

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172 *See infra* text accompanying and preceding note 217.

173 *See infra* note 174.

174 The Commission has submitted an application to the OMB for revision of the current approved collection of information for rule 2a-7 in connection with the 2014 Money Market Fund Adopting Release. When and if approved, the collection of information for rule 2a-7 will increase to 617,653 hours annually for all funds.

175 This estimate is based on the following calculation: 517,228 hours (current approved burden) + 252 hours (eligible security determinations for money market fund portfolio securities, including securities that are subject to a conditional demand feature) + 126 hours (monitoring minimal credit risks) = 517,606 hours. If the revised collection of information for rule 2a-7 in connection with the 2014 Money Market Fund Adopting Release is approved, as well as the collection of information associated with the re-proposed amendments to rule 2a-7 as discussed in this release, the collection of information for rule 2a-7 would increase to 618,031 hours (617,653 hours + 252 hours + 126 hours). *See supra* note 174.

Rule 30b1-7 requires money market funds to file a monthly report electronically on Form N-MFP within five business days after the end of each month. The information required by the form must be data-tagged in XML format and filed through EDGAR. Preparing Form N-MFP is a collection of information under the PRA.[176] The respondents to this collection of information are money market funds. A fund must comply with the requirement to prepare Form N-MFP in order to hold itself out to investors as a money market fund or the equivalent of a money market fund in reliance on rule 2a-7. Responses to the disclosure requirements of Form N-MFP are not kept confidential.

Money market funds are currently required to disclose on Form N-MFP, with respect to each portfolio security, whether the security is a first or second tier security or is unrated, as well as the "designated NRSROs" for each security (and for each demand feature, guarantee, or credit enhancement).[177] As discussed above, the re-proposed amendments would require that each money market fund disclose on Form N-MFP, for each portfolio security, each rating assigned by any NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO), and any other NRSRO rating that the fund's board of directors considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO).[178] Because we believe that the majority of funds would continue to refer to credit ratings in making minimal credit risk determinations, we do not believe the re-proposed amendments to Form N-MFP would result in material changes to the

[176] For purposes of the PRA analysis, the current burden associated with the requirements of rule 30b1-7 is included in the collection of information requirements of Form N-MFP. *See infra* note 188.

[177] *See* Form N-MFP Items C.9, C.10, C.14.b-c, C.15.b-c, C.16.c-d.

[178] *See* re-proposed Form N-MFP Items C.9, C.10, C.14.e, C.15.c, C.16.d; *supra* section II.B.

ongoing burden for most funds.[179] However, we believe that funds will incur one-time costs to re-program their filing software to reflect the new requirements of Form N-MFP.

We estimate that each fund will incur a one-time burden of 3 hours,[180] at a cost of $943 per fund,[181] to comply with the amended disclosure requirements of Form N-MFP, if adopted. Using an estimate of 559 money market funds that are required to file reports on Form N-MFP,[182] we estimate that money market funds would incur, in the aggregate, a total one-time burden of 1,677 hours,[183] at a cost of $527,137,[184] to comply with the amended disclosure requirements of Form N-MFP. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market funds of 559 hours[185] at a cost of $175,712.[186] There would be no external costs associated with complying with the amended disclosure requirement of Form N-MFP.[187]

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179 *See infra* note 204 and accompanying paragraph.

180 We estimate that the one-time hour burden for a money market fund to re-program its Form N-MFP filing software to reflect the new requirements of Form N-MFP would be 3 hours (1 hour by a senior systems analyst, 1 hour by a senior programmer, and 1 hour by an attorney).

181 This estimate is based on the following calculation: (1 hour x $260 (rate for a senior systems analyst) = $260) + (1 hour x $303 (rate for a senior programmer) = $303) + (1 hour x $380 (rate for an attorney) = $380) = $943.

182 This estimate is based on a review of reports on Form N-MFP filed with the Commission for the month ended February 28, 2014.

183 This estimate is based on the following calculation: 3 hours x 559 money market funds = 1,677 hours.

184 This estimate is based on the following calculation: $943 x 559 money market funds = $527,137.

185 This estimate is based on the following calculation: 1,677 hours ÷ 3 years = 559 hours.

186 This estimate is based on the following calculation: $527,137 ÷ 3 years = $175,712.

187 We understand that a certain percentage of money market funds that report information on Form N-MFP license a software solution from a third party that is used to assist the funds to prepare and file the required information, and that a certain percentage of money market funds retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N-MFP. *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at text accompanying nn. 2334-2336.

The current approved collection of information for Form N-MFP is 45,214 annual aggregate hours and $4,424,480 in external costs.[188] The aggregate additional hours associated with the re-proposed amendments to Form N-MFP increase the burden estimate to 45,773 hours annually for all funds.[189] Because we estimate no external costs associated with complying with the amended Form N-MFP disclosure requirements, the annual external costs associated with the Form N-MFP collection of information would remain $4,424,480.

We request comment on these estimates. If commenters believe these estimates are not accurate, we request they provide specific data that would allow us to make more accurate estimates.

V. ECONOMIC ANALYSIS

As discussed above, we are re-proposing amendments to rule 2a-7 and Form N-MFP under the Investment Company Act to implement section 939A of the Dodd-Frank Act, which requires the Commission, to "review any regulation issued by [the Commission] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any

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We recognize that, in general, software service providers that modify their software may incur additional external costs, which they may pass on to money market funds in the form of higher annual licensing fees. *See id.* at text accompanying n. 2340. However, on account of the relatively low per-fund one-time hour burden that we estimate in connection with the amended disclosure requirements of Form N-MFP, we expect that any increase in licensing fees will be insignificant, and thus we estimate that there are no external costs associated with the amended Form N-MFP disclosure requirements.

188 The Commission has submitted an application to the OMB for revision of the current approved collection of information for Form N-MFP in connection with the 2014 Money Market Fund Adopting Release. When and if approved, the collection of information for Form N-MFP will increase to 83,412 hours.

189 This estimate is based on the following calculation: 45,214 hours (current approved burden) + 559 hours = 45,773 hours. If the revised collection of information for Form N-MFP in connection with the 2014 Money Market Fund Adopting Release is approved, as well as the collection of information associated with the re-proposed amendments to Form N-MFP as discussed in this release, the collection of information for Form N-MFP would increase to 83,971 hours (83,412 hours + 559 hours). *See supra* note 188.

references to or requirements in such regulations regarding credit ratings."[190] That section further provides that the Commission shall "modify any such regulations identified by the review . . . to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as [the Commission] shall determine as appropriate for such regulations."[191]

We also are proposing to amend rule 2a-7 to eliminate the exclusion to the issuer diversification requirement for securities subject to a guarantee issued by a non-controlled person. As a result, most non-government securities subject to a guarantee (including an asset-backed security with a presumed sponsor guarantee) would have to comply with both the 5 percent diversification requirement for issuers (including SPE issuers) and the 10 percent diversification requirement for guarantors and providers of demand features.[192]

The economic baseline for our economic analysis is the regulatory framework as it exists immediately before the re-proposal, that is, the regulatory framework after the amendments to rule 2a-7 were adopted today in the 2014 Money Market Fund Adopting Release. As discussed in more detail below, that adopting release makes material changes to money market fund regulation that we believe may result in material changes to the money market fund industry.

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190 Pub. L. No. 111-203 § 939A(a)(1)-(2). Section 939A of the Dodd-Frank Act applies to all federal agencies.

191 Pub. L. No. 111-203 § 939A(b). Section 939A of the Dodd Frank Act provides that agencies shall seek to establish to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

192 As discussed above, the asset-backed security presumed guarantee is counted toward the 10% limitation on guarantees and demand features provided by the same institution. Up to 15% of the value of securities held in a tax-exempt money market fund's portfolio may be subject to guarantees or demand features for a single institution, and up to 25% of the value of securities held in a single state money market fund portfolio may be issued by any single issuer. *See supra* notes 125-126.

Because there is an extended compliance period for those amendments, we do not know how market participants, including money market fund managers selecting portfolio securities, may react as a result. Thus, we are not able to provide quantitative estimates for the incremental effects of our re-proposal. For example, under the baseline, institutional prime money market funds have floating NAVs and maintain the distinction between first and second tier securities. We are unable to estimate how institutional prime funds will choose to allocate their portfolios among first and second tier securities under our re-proposal when they have floating NAVs. We can describe potential economic effects of complying with the re-proposed and proposed amendments to the rule, but without knowing how fund portfolio allocations may change, we cannot quantify these potential effects. For the remainder of our economic analysis, we discuss separately the re-proposed rule 2a-7 amendments to remove and replace ratings references, the re-proposed Form N-MFP amendments, and the proposed amendments to rule 2a-7's issuer diversification provision.

A. Rule 2a-7

The re-proposed amendments to rule 2a-7 would affect five elements of the rule. These are: (i) determination of whether a security is an eligible security; (ii) determination of whether a security is a first tier security; (iii) credit quality standards for securities with a conditional demand feature; (iv) requirements for monitoring securities for ratings downgrades and other credit events; and (v) stress testing.[193] The re-proposed amendments, which are similar to those we proposed in 2011, are designed to remove any requirement of reliance on credit ratings and to substitute standards of creditworthiness that we believe are appropriate.

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193 The re-proposed rule also would make conforming amendments to rule 2a-7's recordkeeping and reporting requirements. *See* re-proposed rule 2a-7(h)(3).

1. Economic Baseline

As discussed above, the credit risk limitations in rule 2a-7 currently require that money market funds undertake a two-step analysis before acquiring a portfolio security.[194] First, funds must determine whether a security has received credit ratings from the "requisite NRSROs" in one of the two highest short-term rating categories or, if the security is unrated, determine that it is of comparable quality. A money market fund must invest at least 97 percent of its portfolio in first tier securities, which are eligible securities that have received a rating from the requisite NRSROs in the highest short-term rating category for debt obligations (or unrated securities of comparable quality). Second, the fund's board of directors (or its delegate) must determine that the security presents minimal credit risks, "based on factors pertaining to credit quality in addition to any rating assigned to such securities by a designated NRSRO." In addition, under rule 2a-7, a security subject to a conditional demand feature may be determined to be an eligible security or a first tier security if, among other conditions: (i) the conditional demand feature is an eligible security or a first tier security, and (ii) the underlying security (or its guarantee) has received either a short-term rating or a long-term rating, as the case may be, within the highest two categories from the requisite NRSROs or is a comparable unrated security.

Based on Form N-MFP filings from February 28, 2014, the Commission estimates that 99.75 percent of aggregate money market fund assets are in first tier securities, 0.24 percent of aggregate money market fund assets are in second tier securities, and 0.01 percent of aggregate money market fund assets are in unrated securities. Among the 559 funds that filed Form N-MFP that month, we estimate that 488 funds held only tier one rated securities, 503 funds held

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194 *See supra* notes 20-25 and accompanying text. The credit risk limitations of rule 2a-7, as well as the other specific provisions of rule 2a-7 that reference credit ratings, were not changed by the adoption of the amendments discussed in the 2014 Money Market Fund Adopting Release.

no tier two rated securities, and 537 funds held no unrated securities. In addition, less than 5 percent of all money market funds, and only 6 prime funds out of 229 prime funds held the maximum amount of second tier securities permitted under rule 2a-7. Using additional data from the Federal Reserve Board, we estimate that money market fund holdings of second tier commercial paper represent 5.1 percent of the outstanding issues of second tier commercial paper.[195]

Securities subject to a conditional demand feature are typically variable rate demand notes issued by municipalities that have a conditional demand feature issued by a bank. Based on Form N-MFP filings as of February 28, 2014, the Commission estimates that 11 percent of money market fund assets are invested in securities with a demand feature. We estimate further that securities with conditional demand features represent 25 percent of securities with demand features and 3 percent of all securities held by money market funds. We further estimate that 81 percent of those underlying securities (or their issuers or guarantors) have received an NRSRO rating in the second-highest long-term rating category, while 19 percent have received an NRSRO rating in the highest long-term category.[196]

Rule 2a-7 currently requires a money market fund board (or its delegate) promptly to reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks.[197] We understand that downgrades are rare among money market fund

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195 This data is based on the Federal Reserve Board's statistics on outstanding volume of commercial paper. *See* Commercial Paper Outstanding by special categories, *available at* http://www.federalreserve.gov/releases/cp/outstanding.htm.

196 An underlying long-term security would become a short-term security when its remaining time to maturity is less than 397 days. *See supra* note 78. These estimates are based on a random sample of 10% of the securities that have demand features that were reported in February 2014 Form N-MFP filings.

197 *See supra* notes 91-92 and accompanying text.

portfolio securities.[198] As discussed above, we believe, based on staff experience, that most, if not all, money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis.[199] We assume for purposes of this analysis, however, that these funds do not have written policies and procedures that specifically address ongoing minimal credit risk monitoring.

Finally, rule 2a-7 currently requires money market funds to stress test their portfolios.[200] Under the rule, a money market fund's board of directors must adopt written procedures to test the ability of a fund to maintain at least 10 percent of its total assets in weekly liquid assets and minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing, the fund's ability to maintain a stable share price per share) based on certain hypothetical events, including a downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio. We believe that funds stress test at least monthly.[201]

2. *Economic Analysis*

The re-proposed amendments to rule 2a-7 would assist in further implementing section 939A of the Dodd-Frank Act. These amendments are designed to establish credit quality standards similar to those currently in the rule. By replacing references to credit ratings, the re-proposed amendments may, particularly when considered together with other amendments the

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198 *See, e.g.*, Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, a report by staff of the Division of Risk, Strategy, and Financial Innovation (Nov. 30, 2012), *available at* http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf, at 14-16 (discussing events such as credit rating downgrades that have led money market fund sponsors to choose to provide support to the fund or to seek staff no-action assurances permitting such support).

199 *See supra* notes 102-106 and accompanying text.

200 Rule 2a-7(g)(8).

201 *See* 2014 Money Market Fund Adopting Release, *supra* note 8, at section IV.A.5.

Commission has adopted that remove credit ratings references in other rules and forms under the federal securities laws, contribute to the Dodd-Frank Act goals of reducing perceived government endorsement of NRSROs and over-reliance on credit ratings by market participants.[202]

Eligible securities. Under the re-proposal, a money market fund board (or its delegate) would be required to determine minimal credit risk by applying a subjective credit quality standard. Because the interpretation of this subjective standard may differ among fund boards and their advisers, the possible range of securities available for investment may differ from that under the current rule if the re-proposed standard is adopted. Aggressive risk assessments may result in a broader set of securities holdings through investments in more second tier securities with a wider range of credit quality, while conservative risk assessments may result in a more restricted set of securities holdings with a narrower range of credit quality. We believe that fund managers are generally unlikely to increase exposure of their funds to riskier second tier securities in light of both current market practices and amendments to rule 2a-7 adopted in the 2014 Money Market Fund Adopting Release.[203] First, we anticipate that many money market funds are likely to retain their current investment policies, which incorporate NRSRO ratings and would be permitted under the re-proposed rule amendments. Indeed, we understand that many funds today have investment policies that are more restrictive than rule 2a-7 requires, including

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202 *See* Report of the House of Representatives Financial Services Committee to Accompany H.R. 4173, H. Rep. No. 111-517 at 871 (2010). *But see infra* notes 209-210 and accompanying text (discussing a commenter's view that the Commission's re-proposal to eliminate credit ratings could actually increase money market fund investor reliance on credit ratings).

203 As noted above, we do not believe fund managers are likely to invest in third tier securities (or comparable unrated securities) because those securities would not satisfy the re-proposed standard for eligible securities that the security's issuer have an exceptionally strong capacity to meet its short-term financial obligations. *See supra* note 45 and accompanying and following text.

policies that, for example, limit investments to first tier securities.[204] As a result, we do not expect that these money market funds would change current policies and procedures they have adopted that limit their investments to those assigned the highest NRSRO ratings. We also note that according to Form N-MFP filings from February 28, 2014, fund assets in second tier securities represented 0.24 percent of total money market fund assets and that 24 funds (out of a total of 559) currently hold the maximum amount of second tier securities permissible under rule 2a-7. We do not anticipate that money market funds representing the significant majority of assets under management are likely to increase substantially their investments in riskier securities as a result of our proposal because these funds do not currently invest in second tier securities to the extent permitted now.

Second, as discussed above, the new amendments to rule 2a-7 may reduce the potential that funds would invest in riskier securities. Under the reforms, money market funds other than government money market funds are subject to fees and gates, while institutional prime money market funds will be required to transact at a floating NAV.[205] We believe that these

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204 As of February 28, 2014, 179 money market funds, representing approximately 59% of all money market funds assets (88% of all institutional money market fund assets) were invested in money market funds that were themselves rated by credit rating agencies, and approximately 98% of rated money market funds were rated first tier. For a money market fund to receive a first tier rating, credit rating agencies generally require the fund to limit its portfolio securities to first tier securities. *See, e.g.*, FitchRatings, Global Money Market Fund Rating Criteria (Mar. 26, 2013), *available at* http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=704145 (registration required) (stating that its "AAAmmf" top rating requires that a money market fund have 100% of its portfolio securities rated first tier ("F1+" or "F1")); Standard & Poor's, Methodology: Principal Stability Fund Ratings (June 8, 2011), *available at* https://www.sbafla.com/prime/portals/8/RiskMan_Oversight/FundProfile/201106_SPPrincipalStabilityFundRatingsMethodology.pdf (stating that "[i]n In order for a fund to be eligible for an investment-grade rating, all investments should carry a Standard & Poor's short-term rating of 'A-1+' or 'A-1' (or SP-1+ or SP-1), or Standard & Poor's will consider all of the investments to be of equivalent credit quality").

205 Rule 2a-7(a)(16) defines a government money market fund as a money market fund that invests 99.5% or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully. *See supra* note 15.

amendments may encourage non-government funds to more closely monitor fund liquidity and hold more liquid securities to increase the level of daily and weekly liquid assets in the fund because doing so will tend to lessen the likelihood of a fee or gate being imposed. The newly-adopted money market fund reforms also require each fund daily to disclose its market value rounded to four decimal points (or an equivalent level of accuracy for a fund using a share price other than $1.0000[206]) and to depict historical information about its daily NAV for the previous six months. These disclosures may increase informational efficiency by allowing investors to see variations in share value that are not apparent in the share price and compare the principal volatility among funds over time. As a result, to the extent that institutional investors continue to value price stability and can see these variations in share value, we believe that institutional prime funds will endeavor to reduce NAV fluctuations.

Third, funds are permitted to refer to credit ratings while making their minimal credit risk determinations. A first tier credit rating might help support the fund's determination that the security is an eligible security, while a second tier credit rating might not support the same determination. Thus, fund managers may have to perform additional credit research and analysis on the issuers of second tier securities in order to determine whether the investment would be permitted under the re-proposed amendments. We believe that many fund managers may not wish to invest in the additional resources necessary to make this assessment with respect to second tier securities unless the fund believes that the expected risk-adjusted return of doing so would be greater than the expected costs.

The re-proposal would eliminate the current limitations on fund investments in second

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206 *See supra* note 49.

tier securities.[207] As a result, funds may increase their holdings of second tier securities despite the considerations discussed above. We believe that, to the extent money market funds increase investments in riskier securities, institutional prime funds are more likely than stable-NAV funds to do so because only stable-NAV funds will break the buck if the economic value of the underlying portfolio changes too much. While some shareholders may continue to demand price stability rather than high yield from institutional prime funds, if enough shareholders prefer yield over price stability, institutional prime funds will be incentivized to increase their investments in second tier securities. Allocative efficiency may improve if such preferences result in relatively riskier securities moving from the portfolios of stable-NAV funds to the portfolios of institutional prime funds because the reallocation may enable money market fund shareholders to choose funds that better match their preferences for risk and return. We do not, however, know whether institutional prime funds with floating NAVs, which will have to compete with other money market funds, including stable-NAV government funds, will focus on maintaining comparatively stable NAVs or on generating comparatively high yields.

Under the assumption that money market funds would increase their relative holdings of second tier securities if the re-proposed amendments were adopted, the effects on competition and capital formation will depend, in part, on whether the increased second tier investments come from new assets outside the funds, which when invested by money market funds are disproportionately invested in second tier securities or whether the increased second tier investments will come from a shift of assets from first tier securities to second tier securities. If the former, the effects of competition between issuers of first and second tier securities might be small, and capital formation might improve in the second tier market as the size of the new

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207 *See supra* notes 25 and 43 and accompanying text.

investment increases. If the latter, an increase in capital formation from issuers of second tier securities may result in a corresponding decrease in capital formation from issuers of first tier securities, which, in turn, may lead to increased competition between issuers of first and second tier securities. We are unable to estimate these effects because we do not know how shareholders and funds will respond to the elimination of the current limitation on fund investments in second tier securities.

The re-proposed amendments to Form N-MFP, which are discussed in more detail below, may reduce the potential that fund boards (or managers) that use credit ratings will increase significantly fund investments in second tier securities beyond the level desired by fund shareholders. We would require each money market fund to disclose on Form N-MFP those NRSRO ratings the fund's board (or its delegate) has considered, if any, in determining whether a security presents minimal credit risks. The disclosure to investors of these risk indicators may have the effect of penalizing funds that assume a level of risk that is different from that which is desired by their shareholders.

As discussed above, the vast majority of money market funds held no second tier securities on February 28, 2014, and few funds held the maximum permissible 3 percent. We therefore believe that a reduction or even elimination of second tier securities from the money market fund industry's aggregate portfolio will not likely have a material effect on issuers of either first or second tier securities. However, removing second tier securities from the portfolios of individual money market funds may negatively affect yields in certain funds, especially during periods when second tier securities offer substantially higher yields than the yields offered by first tier securities.

One commenter suggested that eliminating references to credit ratings in the definition of eligible security would lead to more unrated securities issuances in the market.[208] The commenter argued that some issuers of money market instruments might forego the expense of ratings because they would face greater uncertainty as to market acceptance under the subjective determinations of money market fund advisers. In addition, some issuers of instruments that might not receive a rating in the highest category might choose not to obtain a rating. This commenter opined that such a result would make it more difficult to retain a degree of risk limitation similar to that in the current rule.

We believe that most money market funds would not likely change their current investment policies if the re-proposed amendments were adopted. Nevertheless, we recognize that some fund boards might choose not to consider NRSRO ratings in their credit assessments or as noted above, fewer securities may be rated. If, as a result, the demand for NRSRO ratings were reduced significantly, NRSROs might invest less in producing quality ratings. The importance attached to NRSRO ratings currently as a result of the history of their use in regulatory requirements may impart franchise value to the NRSRO rating business. By eliminating references to NRSRO ratings in federal regulations, section 939A of the Dodd-Frank Act could reduce these franchise values and reduce NRSROs' incentives to produce credible and reliable ratings. In addition, eliminating the required use of credit ratings in Commission rules and forms may reduce the incentive for credit rating agencies to register as NRSROs with the Commission, which registration subjects them to Commission oversight and the statutory and regulatory requirements applicable to NRSROs. If the quality and accuracy of NRSRO ratings were adversely affected yet the ratings continued to be used by enough other parties, the capital allocation process and economic efficiency might be impaired.

208 *See* Schwab Comment Letter, *supra* note 30.

Another commenter stated that our re-proposal to eliminate references to credit ratings could increase investor reliance on credit ratings.[209] This commenter stated that to the extent that investors cannot be reassured that money market funds are investing in rated securities, they can reasonably be expected to seek the "reassurance" ratings provide in other ways. Specifically, investors could seek rated funds in even greater numbers "as the ratings, and the investment guidelines that underlie them, will provide an objective standard that investors can use to distinguish amongst funds," which would encourage more funds to become rated.[210] If, as a result of the re-proposed amendments, currently unrated money market funds obtain ratings to compete in the market, it could increase their costs. Such a result also might increase rather than reduce investor reliance on credit ratings. To the extent that funds continue to use ratings, which we believe most will, investors would be able to determine the ratings of fund portfolio securities from the disclosures required under the re-proposed amendments to Form N-MFP.

In our discussion above, we have suggested guidance that a fund board (or its delegate) should consider in making credit quality assessments. As we noted, based on staff observations in examinations and prior staff guidance, we assume that most money market fund managers currently take these factors into account, as appropriate, when they determine that a portfolio security presents minimal credit risks. Moreover, as noted above, the guidance is not intended to define the parameters of an appropriate credit quality assessment; that is for the fund's board and its adviser to determine with respect to each particular portfolio security. Thus, we do not anticipate that the re-proposal's discussion of factors that a fund manager should consider would significantly change the process for evaluating credit quality or that consideration of the factors

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209 *See* Comment Letter of Wells Fargo Funds Management, LLC (Apr. 25, 2011).

210 *Id.* The comment letter stated that over 80% of institutional assets were in rated money market funds.

listed above would significantly impact the holdings in money market fund portfolios. For these reasons, we believe that the guidance will not have a material effect on efficiency, competition, or capital formation. Funds may, however, consider whether their policies and procedures for credit quality assessment should be revised in light of the guidance, and, as a result, may update them.

Conditional Demand Feature. The re-proposed amendments would replace the current objective standard for determining the credit quality of an underlying security with a subjective standard, which is based on the qualitative standard NRSROs use to describe a security with the second-highest long term rating. We recognize that fund managers could interpret this subjective standard in different ways, which could widen the range of credit quality in underlying securities in which money market funds invest. However, we do not believe that fund managers will likely interpret this subjective standard in a manner that results in funds increasing the risk profiles of their underlying securities. For the reasons discussed above, we do not believe that securities that are rated by NRSROs in the third-highest category for long-term ratings (or comparable unrated securities) would satisfy the proposed standard that the issuer of underlying securities have a very strong capacity to meet its financial commitments.[211] We also note that funds currently can invest exclusively in underlying securities rated in the second-highest category if

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211 *See* text accompanying *supra* note 84. Securities with these ratings generally have expectations of low credit risk or have obligors have only a strong capacity to meet their financial commitments. *See* Moody's Ratings Definitions, *supra* note 38, at 5 (long-term obligations "rated A are judged to be upper-medium grade and are subject to low credit risk."); Fitch Ratings Scales, *supra* note 38, at 9 (long-term "A ratings denote expectations of low credit risk. The capacity for payment of financial commitments is considered strong."); S&P Ratings Definitions, *supra* note 38, at 4 (a long-term obligation "rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitment on the obligation is still strong.").

the instrument meets the other conditions for eligibility.[212] We estimate that most underlying securities held by money market funds (81 percent) are rated in the second-highest long-term category, and a smaller portion (19 percent) are rated in the highest long-term category.[213] For these reasons, we have no reason to anticipate that funds are likely to increase the portion of their underlying securities that are rated in the second-highest long-term category as a result of the re-proposed amendments. Because we believe that our re-proposal will result in only small changes to the behavior of funds with respect to investments in securities with conditional demand features, we believe that this re-proposed amendment will result in little to no effect on efficiency, competition, or capital formation for either funds or issuers.

As discussed above, we believe that if the re-proposed amendments to rule 2a-7 were adopted, money market fund complexes would incur certain costs in reviewing and updating their policies and procedures. Specifically, each complex would review the amendments to the credit quality standards in rule 2a-7 and, as it determines appropriate in light of the amendments, revise its policies and procedures to incorporate the amended credit quality standards to be used in determining the eligibility of a money market fund's portfolio securities, including securities that are subject to a conditional demand feature.

Monitoring Minimal Credit Risk. As discussed above, we believe the re-proposed requirement that each money market fund adopt written policies and procedures for ongoing monitoring of minimal credit risks for each portfolio security essentially codifies the current practices of fund managers, which are already explicit (and implicit) in several provisions of the

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212 Rule 2a-7(d)(2)(iv).

213 *See supra* note 196 and accompanying text.

rule and are discussed above.[214] Although based on staff experience we believe that most, if not all, money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis (as rule 2a-7 requires[215]), we note that money market funds are not currently required to maintain written policies and procedures that specifically address monitoring. We believe that to the extent that some money market funds may not have written procedures to regularly monitor minimal credit risks, our re-proposal to require such procedures is designed to ensure that funds are better positioned to identify quickly potential risks of credit events that could impact portfolio security prices. The costs associated with the re-proposed minimal credit risk monitoring requirement, as discussed above, will vary based on the extent to which funds' existing procedures need to be transcribed and reviewed.[216] We believe that the written-procedure requirement in the re-proposal will not materially affect efficiency, competition, or capital formation because we expect no material changes in how funds invest.

Stress Testing. As discussed above, the re-proposed amendments are designed to retain similar standards for stress testing as under current rule 2a-7. Specifically, while the re-proposed amendments would replace the current reference to ratings downgrades in the rule 2a-7 stress testing requirement, the amendments would instead require funds to test for an event indicating or evidencing credit deterioration of particular portfolio security positions, each representing various positions of the fund's portfolio, and include a downgrade or default as examples of such an event. Consequently, we recognize that a money market fund could use its current policies and procedures for stress testing, including testing for a downgrade, to comply with the

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214 *See supra* notes 91-92, 102-106 and accompanying text.

215 *See id.*

216 *See supra* note 163.

proposed amendments. And we believe that funds will do so because a downgrade by a relevant NRSRO may impact the price of a portfolio security.[217] Because we believe that funds will not change their stress testing policies and procedures in response to this re-proposed amendment, we do not believe there would be any costs associated with it.[218] Thus we do not anticipate that this re-proposed amendment is likely to impact efficiency, competition, or capital formation.

Policies and Procedures. As discussed above, money market funds have written policies and procedures for complying with rule 2a-7, including policies and procedures for determining and reassessing minimal credit risk and for stress testing the portfolio.[219] Although our re-proposal would not require changes to these policies and procedures for most money market funds, we anticipate that funds would likely review them and may revise them in consideration of the standard provided in the re-proposal, if adopted. We also anticipate that after such a review, many fund boards and advisers would retain investment policies tied to NRSRO ratings required under the current rule.[220] Although we cannot predict the number of funds that would review and revise their policies and procedures or the extent to which funds may do so, we estimate that each fund would incur, at a minimum, the collection of information costs discussed in the Paperwork Reduction Act section for a total average one-time cost of approximately

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217 *See* ICI Comment Letter, *supra* note 30.

218 *See supra* text accompanying and following note 172.

219 *See* rule 38a-1(a).

220 *See supra* paragraph including note 151. We also note that most commenters on the 2011 proposal supported permitting funds to continue to use ratings, and some asked us to clarify that ratings continue to be a permissible factor for boards or their delegates to consider in making credit quality determinations. *See, e.g.*, BlackRock Comment Letter, *supra* note 122; IDC Comment Letter, *supra* note 30. Our re-proposed amendments to Form N-MFP, discussed above, reflect our clarification that ratings continued to be a permissible factor to use in making credit quality determinations.

$2,838 per fund complex.[221] These minimum costs assume that a fund would review its policies and procedures in consideration of the re-proposed amendments and make minor changes to conform with revised rule text, but would not change significantly the policies and procedures relating to the fund's credit quality assessments, monitoring for minimal credit risk or stress testing, which currently include consideration of NRSRO ratings.

As noted above, we believe that while funds monitor for minimal credit risks on an ongoing basis currently, we assume that funds do not have written policies and procedures to address monitoring.[222] We estimate the average one-time costs to adopt those written policies would be $3,619 per fund.[223] Because we anticipate that our re-proposal is not likely to change these fund policies significantly, we believe it is not likely to have a significant impact on efficiency, competition, or capital formation.

3. Alternatives

In addition to the re-proposed amendments to rule 2a-7, we considered adopting the amendments we proposed in 2011. That proposal would have required fund boards first to determine whether securities are eligible securities based on minimal credit risks, and second to distinguish between first and second tier securities based on subjective standards similar to those the ratings agencies have developed to describe their ratings. As discussed above, we have been persuaded by the concerns some commenters expressed on the 2011 proposal. In particular, as several commenters noted, a two-tier approach could be confusing without reference to objective standards, and fund advisers are likely to make many of the same considerations in evaluating

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221 *See supra* note 154.

222 *See supra* notes 102-106 and accompanying text.

223 *See supra* note 164.

first and second tier securities.[224] In addition, on balance, we believe that the re-proposed single standard may better reflect the risk limitation in the current rule. The 2011 Proposing Release described the standard for second tier securities in language similar to the descriptions NRSROs use for second tier securities, which fund managers might interpret as permitting funds to invest in riskier second tier securities to a greater extent than under our re-proposal, which is designed to limit investments in very high quality second tier securities. Such increased investments in riskier second tier securities would increase the risk profile of money market funds.

We also considered proposing a single standard that would require a minimal credit risk determination, but with a finding different from what we are re-proposing today. For example, the board could be required to find that the issuer or guarantor has a repayment capacity that reflects the standard that NRSROs articulate for second tier securities. We did not re-propose this alternative because of concerns that such a standard could lower the credit quality of money market fund portfolios. Under this single standard, there would be no distinction between first tier and second tier securities and no limitation on fund holdings of second tier securities, unlike the current rule, which limits a money market fund to investing no more than 3 percent of its total assets in second tier securities. Without that investment limitation, a manager could invest a significantly greater portion of the fund's portfolio in second tier securities, which could result in an increase in the portfolio risk of some funds that is inconsistent with the relevant risk limitations in the current rule. Both this alternative single standard approach and the two-tier approach discussed above could have different effects on competition and capital formation than the effects on competition and capital formation stemming from the re-proposed approach, as a result of ensuing increased or decreased investments in second tier securities. However, we are

224 *See supra* note 31 and accompanying text.

unable to estimate the relative effects on competition or capital formation because we do not know how shareholders and funds would respond to these approaches as compared to the re-proposed elimination of the current limitation on fund investments in second tier securities.

With respect to replacing the reference to ratings in determining the eligibility of underlying securities (*i.e.*, those that are subject to a conditional demand feature), we considered a qualitative standard that NRSROs use to articulate long-term securities in the highest rating category. We note generally that few issuers or guarantors have received long-term ratings in the highest category.[225] Moreover, issuers assigned a first tier short-term rating may have received a long-term rating in the second-highest category.[226] Because of the limited NRSRO assignments of the highest long-term ratings to issuers, managers might interpret this alternative to preclude fund investments in a security subject to a conditional demand feature (that is itself an eligible security) if the underlying security's issuer or guarantor is rated in the second-highest category. Such an interpretation could significantly deviate from the credit quality standards in the current rule, which is not our intent. It also would likely reduce money market fund investments in these securities.

In re-proposing to eliminate the current reference to ratings downgrades in the monitoring

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225 *See* Vipal Monga & Mike Cherney, *CFO Journal: Lose your Triple-A Rating? Who Cares?*, WALL ST. J. (Apr. 29, 2014) (noting the decline in companies with triple A long-term ratings).

226 *See* Moody's Ratings Definitions, *supra* note 38, at 6 (showing the linkage between short-term and long-term ratings when such long-term ratings exist); Standard &Poor's, About Credit Ratings (2012), http://www.standardandpoors.com/aboutcreditratings/RatingsManual_PrintGuide.html (each short-term rating corresponds to a band of long-term ratings. For instance, the A-1 short-term rating generally corresponds to the long-term ratings of 'A+,' 'A,' and 'A-'."); FitchRatings, Ratings Definitions (2014), https://www.fitchratings.com/jsp/general/RatingsDefinitions.faces?context=5&detail=507&context_ln=5&detail_ln=500 (indicating the relationship between short-term and long-term ratings with a table and acknowledging that "lower relative short-term default risk, perhaps through factors that lend the issuer's profile temporary support, may coexist with higher medium-or longer term default risk").

standard of rule 2a-7, we considered the rule 2a-7 amendments that we proposed in 2011.[227] These proposed amendments would have required that, in the event the money market fund adviser (or any person to whom the board has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the board or its delegate would have to reassess promptly whether the security continues to present minimal credit risks.[228] Most of those who commented on this proposed amendment objected to it as an inefficient method of notifying funds if a portfolio security is potentially impaired. As discussed in more detail above, we have been persuaded by commenters' concerns in re-proposing a different standard than that proposed in 2011.[229]

Finally, we also considered removing the current reference to ratings downgrades in the stress testing provisions of rule 2a-7 and replacing this reference with the requirement that money market funds stress test their portfolios for an adverse change in the ability of a portfolio security issuer to meet its short-term credit obligations. As discussed above, we proposed this alternative in 2011, and commenters on the 2011 proposal who addressed this issue uniformly advocated against removing the reference to a downgrade in the stress testing conditions.[230] We believe that the 2011 proposed standard, as compared to the standard we re-propose in this release, was less clear and that it would lead to more burdensome monitoring and greater inefficiencies in developing hypothetical events for stress testing. In light of these commenters' concerns, we have thus decided to re-propose amendments to the stress testing provisions of rule

227 *See supra* notes 91-93 and accompanying text.

228 *Id.*

229 *See supra* notes 97-100 and accompanying text.

230 *See supra* notes 112-113 and accompanying text.

2a-7 that would permit funds to continue to test their portfolios against a potential downgrade or default, as discussed in more detail above.[231]

4. *Request for Comment*

We request comment on our estimates and assumptions regarding the costs and benefits of the re-proposed amendments to rule 2a-7 and the effects of these amendments on efficiency, competition, or capital formation. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[232] we also request information regarding the potential annual effect of the re-proposed amendments to rule 2a-7 on the U.S. economy. Commenters are requested to provide empirical data to support their views.

In addition to our general request for comment on the costs and benefits of the re-proposed amendments, we request specific comment on certain aspects of the amendments. What additional operational costs, if any, may result from making minimal credit risk determinations based on a subjective credit quality standard? Specifically, would the potentially broader range of securities available for investment that could result from a board's interpretation of this standard produce additional or different costs than the current costs of determining minimal credit risks? Likewise, what additional operational costs, if any, may result from using a subjective standard for determining the credit quality of securities subject to a conditional demand feature? Would the potentially broader range of underlying securities available for investment produce additional or different costs than the current costs of evaluating the credit quality of underlying securities?

We have given guidance on the factors that advisers should consider, as appropriate, in

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231 *See supra* note 114 and accompanying text.

232 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

determining that a fund's portfolio securities present minimal credit risk. To the extent that consideration of these factors is not consistent with current industry practice, how would funds benefit from consideration of these factors? Would this guidance result in money market funds or their advisers incurring additional costs, such as costs to change the process for evaluating credit quality? What type of costs would funds and advisers incur, and how much? With respect to our proposed requirement for money market funds to adopt written policies and procedures for ongoing monitoring of minimal credit risks to what extent do commenters currently have written policies and procedures covering this type of monitoring?

We also request comment on our re-proposed stress test amendments. Do commenters agree with our assessment that, under the amendments to rule 2a-7 that we re-propose, funds would retain downgrades by relevant NRSROs as hypothetical events for stress testing, as under current rule 2a-7? What hypothetical events are funds likely to use in addition to or in place of downgrades and why?

Finally, we request comment on the costs and benefits of the alternatives to the re-proposed amendments discussed above.

B. Form N-MFP

The re-proposed amendments would require money market funds to disclose NRSRO ratings in certain circumstances. Specifically, a fund would have to disclose for each portfolio security, (i) each rating assigned by any NRSRO if the fund or its adviser subscribes to that NRSRO's services, as well as the name of the agency providing the rating, and (ii) any other NRSRO rating that the fund's board of directors (or its delegate) considered in making its minimal credit risk determination, as well as the name of the agency providing the rating. NRSRO ratings provide one indicator of riskiness of a fund's portfolio securities and, as discussed above, we anticipate that they will continue to be considered by many money market fund managers in performing credit quality assessments. We believe this ratings information may be useful to the Commission, to investors, and to various third parties as they monitor and evaluate the risks that fund managers take in both stable-NAV and institutional prime funds. We believe that this ratings information might be especially useful during periods in which funds impose fees and/or gates even though ratings are not immediately updated.

1. Economic Baseline

Under the economic baseline outlined above, money market funds are required to disclose in Form N-MFP the credit ratings for each portfolio security. More specifically, the baseline form requires a fund to identify whether a portfolio security is a first or second tier security or is unrated, and it requires the fund to identify the "designated NRSROs" for each security (and for each demand feature, guarantee, or other credit enhancement). This disclosure requirement was not changed by the 2014 Money Market Fund Adopting Release.

As noted above, based on Form N-MFP filings from February 28, 2014, the Commission estimates that 99.75 percent of aggregate money market fund assets are invested in first tier securities, 0.24 percent of aggregate money market fund assets are invested in second tier securities, and 0.01 percent of aggregate money market fund assets are invested in unrated securities. Among the 559 funds that filed that month, we estimate that 488 funds held only tier one securities, 503 funds held no tier two securities, and 537 funds held no unrated securities.

2. Economic Analysis

We anticipate that our re-proposal is likely to have two primary benefits. First, it may contribute to eliminating perceived government endorsement of NRSROs and reducing over-reliance on credit ratings, particularly when considered together with other amendments the

Commission has adopted that remove credit ratings references in other rules and forms under the federal securities laws. Second, it will provide transparency on whether or not specific funds use credit ratings when making investment decisions, and, if credit ratings are used, it allows shareholders and other interested parties to use those ratings to make their own risk assessments.

We anticipate that our re-proposal is likely to have two primary costs. First, it may impose administrative costs on funds that need to re-program their Form N-MFP filing software.[233] Second, because only funds that choose to consider credit ratings in assessing minimal credit risk will be permitted to disclose NRSRO ratings on Form N-MFP, our re-proposal may reduce transparency of risks taken by funds that do not choose to consider credit ratings. This loss of transparency could create additional servicing costs for such funds if shareholders demanded new communications regarding the credit quality of the portfolio.[234]

The net effect of the re-proposed amendments to Form N-MFP is that funds could not disclose credit ratings if credit ratings are not considered in determining whether a security is eligible for the portfolio. However, as discussed above, we believe that our re-proposal will not result in any material changes for the majority of funds because they will, we believe, continue to refer to credit ratings. We believe, therefore, that the re-proposal's effects on efficiency, competition, and capital formation likely will be negligible. To the extent that money market funds continue to consider NRSRO ratings in making their minimal credit risk determinations, the re-proposed amendments to Form N-MFP may reduce the potential that fund managers will increase significantly fund investments in riskier second tier securities; a fund would be required

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233 *See supra* notes 180-181 and accompanying text (discussion of re-programming costs in PRA analysis).

234 *See* Dreyfus Comment Letter *supra* note 30 (opposing the elimination of credit ratings disclosures in Form N-MFP because of the potential that the fund would bear increased shareholder servicing costs to provide additional communications regarding the credit quality of the portfolio).

to disclose ratings considered in those credit determinations, and the ratings would reflect that increased risk. As a result, the disclosure to investors of these risk indicators may have the effect of penalizing funds that assume more risk.

3. *Alternatives*

In considering how to meet our obligations under the Dodd-Frank Act with respect to Form N-MFP, we evaluated two primary alternatives. In 2011, we proposed to completely eliminate the following two form items: the item that requires a fund to identify whether a portfolio security is a first tier security, a second tier security, or an unrated security; and the item that requires the fund to identify the "requisite NRSROs" for each security (and for each demand feature, guarantee, or other credit enhancement). We are not re-proposing this alternative because we now believe that completely eliminating such disclosure requirements masks not only the credit ratings but also information on whether or not the fund uses credit ratings when making its investment decisions.

We also considered not removing the disclosure requirement as recommended by several commenters to the 2011 Proposing Release.[235] We elected not to leave the current disclosure requirements as is, but instead to re-propose the required disclosure of NRSRO ratings only in certain circumstances. We believe this re-proposal would be in keeping with Congressional intent underlying section 939A of the Dodd-Frank Act to reduce perceived government endorsement of credit ratings.

4. *Request for Comment*

We request comment on our estimates and assumptions regarding the costs and benefits

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[235] *See* BlackRock Comment Letter, *supra* note 122; Dreyfus Comment Letter, *supra* note 30; Federated Comment Letter, *supra* note 30; Comment Letter of the Securities Industry and Financial Markets Association (Apr. 18, 2011).

of the re-proposed amendments to Form N-MFP and the effects of these amendments on efficiency, competition, or capital formation. As discussed above, we believe that most, if not all, money market funds will continue to consider NRSRO ratings in some form. We request comment on whether any funds expect that they will not report NRSRO ratings, and on shareholders' and third parties' likely response to funds that do not report NRSRO credit ratings. We also request comment on our assumption that the costs to money market funds to reprogram their Form N-MFP filing software, in order to comply with the re-proposed amendments, would be the same costs that we discuss in the Paperwork Reduction Act analysis of this release.[236] Finally, we request comment on the costs and benefits of the alternatives to the re-proposed amendments discussed above.

For purposes of SBREFA, we also request information regarding the potential annual effect of the re-proposed amendments to Form N-MFP on the U.S. economy. Commenters are requested to provide empirical data to support their views.

C. Exclusion from the Issuer Diversification Requirement

1. Economic Baseline

As discussed above, most money market fund portfolio securities that are subject to a guarantee by a non-controlled person are currently subject to a 10 percent diversification requirement on guarantors but no diversification requirement on issuers, while non-government securities with guarantors that do not qualify as non-controlled persons are generally subject to both a 5 percent diversification requirement with respect to issuers and a 10 percent diversification requirement with respect to guarantors.[237] Today, we adopted amendments to rule

236 *See supra* notes 180-187 and accompanying text.

237 We note that single state funds may invest up to 25% of fund assets in securities of any single

2a-7 that deem sponsors of asset-backed securities to be guarantors of the asset-backed security (unless the fund's board rebuts the presumption). As a result, under rule 2a-7's definition of a guarantee issued by a non-controlled person, both non-asset-backed securities and asset-backed securities subject to such a guarantee (including asset-backed securities with a presumed sponsor guarantee) are excluded from the rule's issuer diversification requirement. That is, non-asset-backed securities and asset-backed securities subject to a guarantee by a non-controlled person are subject to a 10 percent diversification requirement on guarantors, but they are not subject to a 5 percent issuer diversification requirement on the issuer.[238] This forms the economic baseline for the new diversification amendments that we are proposing today.

2. *Economic Analysis*

We believe that very few money market funds rely on the issuer diversification exclusion for securities subject to a guarantee by a non-controlled person. This belief is based on our analysis of February 2014 Form N-MFP data, which shows that only 8 out of 559 money market funds held securities with a guarantee by a non-controlled person that exceeded the 5 percent diversification requirement for issuers. We believe that these and only these funds in February 2014 relied on the exclusion from the 5 percent issuer diversification requirement with respect to issuers of securities that are subject to a guarantee issued by a non-controlled person. However, we recognize that changes in fund assets could mask which funds rely on this exclusion at acquisition: a fund might be above the 5 percent limit today solely due to a decline in fund assets after acquisition, and a fund might be below the 5 percent limit today solely due to an increase in

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issuer, and tax-exempt funds may have as much as 15% of the value of portfolio securities invested in securities subject to guarantees or demand features issued by a single provider that is a non-controlled person. Rule 2a-7(d)(3)(i)(B); 2a-7(d)(3)(iii)(B).

238 *See* rule 2a-7(a)(18) (definition of guarantee); rule 2a-7(a)19) (definition of guarantee issued by a non-controlled person); rule 2a7(d)(3)(i) (issuer diversification).

fund assets after acquisition.[239] Whatever the cause, a money market fund that has invested more than 5 percent of its assets in an issuer of securities subject to a guarantee issued by a non-controlled person in reliance on the current exclusion under current rule 2a-7 would, when those investments mature, have to reinvest the proceeds over 5 percent elsewhere. Based on the February 2014 Form N-MFP filings, we believe that only a few funds would have to make changes to their portfolios to bring them into compliance with the proposed amendments. These changes may or may not require the funds to invest in alternative securities, and the alternative securities may or may not be inferior because they offer, for example, lower yields, lower liquidity, or lower credit quality. It appears that the proposed elimination of the exclusion would have affected only 8 funds in February 2014. Five of these 8 funds exceeded the 5 percent issuer concentration limit by less than 1 percent of fund assets, 2 of the 8 exceeded that limit by less than 2 percent, and the remaining fund exceeded the limit by slightly more than 5 percent. In most cases, the fund exceeded the 5 percent diversification requirement with respect to only one issuer (one fund exceeded the requirement by less than 1 percent with respect to two issuers, and two funds had greater than 5 percent exposure to the same issuer). Because of the less than significant impact on these funds, we believe that the potential lower yields, less liquidity or increased risks associated with the proposal would be small for the affected funds.[240]

239 All of rule 2a-7's diversification limits are applied at the time of acquisition. For example, a fund may not invest in a particular issuer if, after acquisition, the fund's aggregate investments in the issuer would exceed 5% of fund assets. But if the fund's aggregate exposure after making the investment was less than 5%, the fund would not be required to later sell the securities if the fund's assets decreased and the fund's investment in the issuer came to represent more than 5% of the fund's assets.

240 Consider, for example, how reducing a position from 7% to 5% might affect fund yields. The effect could be as small as 0% if the 2% of assets are reinvested in securities that offer the same yield as the original 7% of assets. On the other hand, the portfolio change could decrease fund yields by as much as $2/7 \approx 29\%$ if all of the portfolio yield came from the 7% security. We believe that funds will choose alternative securities that have similar yields as the securities

We assume that all funds would incur costs associated with updating their systems to reflect the proposed amendment, as well as the associated compliance costs, if their systems already incorporate this issuer diversification exclusion. We believe that these costs would be small for all funds because we believe that all funds currently have the ability to monitor issuer diversification to comply with rule 2a-7's limits on issuer concentration.[241]

Our proposed amendment offers two primary benefits. First, the amendment simplifies rule 2a-7's diversification requirements by eliminating the exclusion for securities with a guarantee issued by a non-controlled person. This would lower certain compliance and operational costs to the extent that funds no longer have to keep track of the securities that have such guarantees and would be eligible for the exclusion. Second, by requiring greater issuer diversification for those funds that rely on the exclusion, the proposed amendments will reduce concentration risk in those funds and may make it easier for funds to maintain or generate liquidity during periods when they impose fees and/or gates.[242] We estimate that 8 funds exceeded the 5 percent issuer diversification limit in February 2014; nevertheless, we recognize that these amendments may constrain more funds in the future that otherwise would have less issuer diversification.

Because we believe that the universe of potentially affected funds and issuers is small, we believe that our proposed amendments will have only negligible effects on efficiency, competition, and capital formation. Although we recognize that our proposed amendments may affect more funds and more issuers in the future, we estimate that they will affect only 8 funds

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replaced.

241 *See* 1991 Adopting Release, *supra* note 22, at section II.B.1 (adopting the issuer concentration limit).

242 *See supra* section II.C.

and 8 issuers today. These 8 funds exceed the proposed issuer diversification limit by only a small amount for the 8 issuers. We believe that the 8 funds will find comparable alternative securities for the amount that exceeds 5 percent, and we believe that the 8 issuers will find other investors willing to buy the amount that exceeds the 5 percent for a comparable price.

3. *Alternatives*

As an alternative to eliminating the exclusion from issuer diversification for securities with a guarantee issued by a non-controlled person, we considered requiring money market funds to be more diversified by lowering a fund's permitted exposure to any guarantor or provider of a demand feature from 10 percent to 5 percent of total assets. We discussed potential benefits and costs of this alternative approach, and we requested comment on it in the 2013 Money Market Fund Proposing Release.[243] As discussed in more detail above, we decided that the current requirements for diversification of guarantors and providers of demand features together with the issuer diversification requirement if applied generally to all securities, as under the proposed amendment, appropriately address our concerns relating to money market fund risk exposures.[244] We also believe that the potential costs of this alternative approach would likely be more significant than the costs of our proposal. As of the end of February 2014, we estimate that 107 (of 229) prime money market funds had total exposure to a single entity (including directly issued, asset backed commercial paper sponsorship, and provision of guarantees and demand features) in excess of 5 percent. Under the alternative, any fund that had exposure to an entity

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243 *See* 2013 Money Market Fund Proposing Release, *supra* note 5, at section III.J.4. We received no comments on this alternative approach. We also requested comment in 2009 on whether to reduce rule 2a-7's current diversification limits. *See* 2009 Money Market Fund Proposing Release, *supra* note 127, at section II.D. Most commenters opposed these reforms because, among other reasons, the reductions could increase risks to funds by requiring the funds to invest in relatively lower quality securities. *See id.* at n.909.

244 *See supra* text following note 137 and accompanying notes 138-140.

greater than 5 percent when those assets matured would have to reinvest the proceeds of the securities creating that exposure in different securities or securities with a different guarantor. Those changes may or may not require those funds to invest in alternative securities, and those securities might present greater risk if they offered lower yields, lower liquidity, or lower credit quality. The alternative approach would appear to affect many more funds than would the proposed amendment. As a result, we believe that a better approach to achieving our reform goal would be to restrict risk exposures to all non-government issuers of securities subject to a guarantee or demand feature in the same way, and to require money market funds (other than tax-exempt and single state funds as described above) that invest in non-government securities subject to a guarantee to comply with the 5 percent issuer diversification requirement and the 10 percent diversification requirement on guarantors and demand feature providers.

4. Request for Comment

We request comment on our estimates and assumptions regarding the costs and benefits of the proposed amendments to rule 2a-7 that would remove the issuer diversification exclusion for securities subject to a guarantee by a non-controlled person, as well as the effects of this amendment on efficiency, competition, and capital formation. For purposes of SBREFA, we also request information regarding the potential annual effect of this proposed amendment to rule 2a-7 on the U.S. economy. Commenters are requested to provide empirical data to support their views.

In addition to our general request for comment on the costs and benefits of the proposed amendment, we request specific comment on certain aspects of the amendment. Are we correct in assuming that funds would not make substantial changes to their securities holdings as a result of the proposal? Do commenters expect that funds would incur operational costs in addition to, or that differ from, the costs we outlined above? What would be the costs of making such changes? Do commenters expect that money market funds would encounter any difficulties in finding alternative investments under our proposal that have suitable characteristics? Why or why not? How would this proposal affect fund yields and the stability of fund NAVs and liquidity? Will any of these or other effects be large enough to affect the behavior of money market fund shareholders? How will shareholders respond? Would any of these effects be different in floating NAV funds than they would be in non-floating NAV funds? Would our proposed amendments have a differential effect on funds that impose fees and/or gates? Do commenters agree that our proposed amendments will have only negligible effects on issuers? Why or why not? Are there benefits or costs in any part of the money market fund industry that we have not identified or discussed? If so, what are those costs or benefits? Are we correct in our belief that there will be only negligible effects on efficiency, competition, and capital formation? If not, what are the effects that we overlooked?

VI. REGULATORY FLEXIBILITY ACT CERTIFICATION

Section 3(a) of the Regulatory Flexibility Act of 1980[245] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis ("IRFA") of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[246] Pursuant to 5 U.S.C. section 605(b), the Commission hereby certifies that the re-proposed and proposed amendments to rule 2a-7 under the Investment Company Act and the re-proposed amendments to Form N-MFP under the Investment Company Act would not, if adopted, have a significant

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245 5 U.S.C. 603(a).

246 5 U.S.C. 605(b).

economic impact on a substantial number of small entities.

We are re-proposing amendments to replace references to credit ratings in rule 2a-7 and modify disclosures of credit ratings in Form N-MFP. In addition, we are proposing to amend rule 2a-7's provisions relating to issuer diversification to eliminate an exclusion from the current issuer diversification requirement for securities that are subject to a guarantee issued by a non-controlled person.

Based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities.[247] For this reason, the Commission believes that the re-proposed and proposed amendments to rule 2a-7 and the re-proposed amendments to Form N-MFP would not, if adopted, have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the re-proposed and proposed amendments to rule 2a-7 and the re-proposed amendments to Form N-MFP could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

STATUTORY AUTHORITY

The Commission is proposing amendments to rule 2a-7 under the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), 80a-37(a)] and section 939A of the Dodd-Frank Act. The Commission is proposing amendments to Form

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[247] Under the Investment Company Act, an investment company is considered a small business or small organization if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. *See* 17 CFR 270.0–10.

N-MFP under the authority set forth in sections 8(b), 30(b), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 80a-29(b), 80a-30(a) and 80a-37(a)] and section 939A of the Dodd-Frank Act.

List of Subjects

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULE AND FORM AMENDMENTS

PART 270--RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

2. Section 270.2a-7 is amended by:

a. In paragraph (a)(5), removing the words "and (D)";

b. Removing paragraph (a)(11);

c. Redesignating paragraphs (a)(12) through (a)(13) as (a)(11) through (a)(12);

d. Revising newly designated paragraph (a)(11);

e Removing paragraph (a)(14);

f. Redesignating paragraphs (a)(15) through (a)(22) as (a)(13) through (a)(19);

g. Revising newly designated paragraph (a)(17);

h. Removing paragraph (a)(22);

i. Redesignating paragraph (a)(23) as paragraph (a)(20);

j. Removing paragraph (a)(24);

k. Redesignating paragraph (a)(25) as paragraph (a)(21);

l. Removing paragraph (a)(26);

m Redesignating paragraphs (a)(27) through (a)(31) as paragraphs (a)(22) through (a)(26);

n. Removing paragraph (a)(32);

o. Redesignating paragraphs (a)(33) and (a)(34) as paragraphs (a)(27) and (a)(28);

p Revising paragraph (d)(2)(i);

q. Removing paragraph (d)(2)(ii);

r. Redesignating paragraphs (d)(2)(iii) and (d)(2)(iv) as paragraphs (d)(2)(ii) and (d)(2)(iii);

s. Revising newly designated paragraph (d)(2)(ii);

t. In newly designated paragraph (d)(2)(iii):

i. removing the words "or a first tier security" from the introductory text;

ii. removing the words "or first tier security, as the case may be" from paragraph (A);

u. Revising newly designated paragraph (d)(2)(iii)(C);

v. Adding paragraph (d)(2)(iii)(D);

w. In paragraph (d)(3);

i. Removing the words "and securities subject to a guarantee issued by a non-controlled person" in paragraph (d)(3)(i);

ii. Removing the words "first tier" in paragraph (d)(3)(i)(A)*(1)*;

iii. Removing paragraph (d)(3)(i)(C);

iv. Removing paragraph (d)(3)(iii)(C);

x. In paragraph (f):

i. Removing the word "Downgrades," from the paragraph heading;

ii. Removing paragraph (f)(1);

iii. Redesignating paragraphs (f)(2) through (f)(4) as paragraphs (f)(1) through (f)(3);

iv. Removing the words "and other events" in the heading of newly designated paragraph (f)(1);

v. In the introductory text of newly designated paragraph (f)(1), removing the phrase "paragraphs (f)(2)(i) through (iii)" and adding in its place "paragraphs (f)(1)(i) through (iii)";

iv. Revising newly designated paragraph (f)(1)(ii);

v. Removing newly designated paragraph (f)(1)(iii) and redesignating paragraph (f)(1)(iv) as paragraph (f)(1)(iii);

y. Revising paragraph (g)(3);

z. Revising paragraph (g)(8)(i)(B);

aa. Revising paragraph (h)(3);

bb. In paragraph (j):

i. Removing the words "(a)(11)(i) (designation of NRSROs)" in the introductory text; and

ii. Removing the phrase "in paragraph (d)(2)" and adding in its place the phrase "in paragraphs (d)(2) and (g)(3)" in paragraph (1).

The additions and revisions read as follows:

§ 270.2a-7 Money market funds.

(a) * * *

(11) Eligible security means a security:

(i) With a remaining maturity of 397 calendar days or less that the fund's board of directors determines presents minimal credit risks, which determination must include a finding that the security's issuer has an exceptionally strong capacity to meet its short-term financial obligations;

NOTE to paragraph (a)(11)(i): For a discussion of the phrase "exceptionally strong capacity to meet its short-term financial obligations," see Investment Company Act Release No. 31184, (July 23, 2014).

(ii) That is issued by a registered investment company that is a money market fund; or

(iii) That is a government security.

* * * * *

(17) *Guarantee issued by a non-controlled person* means a guarantee issued by a person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (control means "control" as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a-2(a)(9)).

* * * * *

(d) * * *

(2) * * *

(i) *General.* The money market fund shall limit its portfolio investments to those United States dollar-denominated securities that are at the time of acquisition eligible securities.

(ii) *Securities subject to guarantees.* A security that is subject to a guarantee may be determined to be an eligible security based solely on whether the guarantee is an eligible security, *provided however*, that the issuer of the guarantee, or another institution, has undertaken to promptly notify the holder of the security in the event the guarantee is substituted with another guarantee (if such substitution is permissible under the terms of the guarantee).

(iii) * * *

(C) The fund's board of directors determines that the issuer of the underlying security or any guarantor of such security has a very strong capacity for payment of its financial commitments; and

(D) The issuer of the conditional demand feature, or another institution, has undertaken to promptly notify the holder of the security in the event the conditional demand feature is substituted with another conditional demand feature (if such substitution is permissible under the terms of the conditional demand feature).

* * * * *

(f) * * *

(1) * * *

(ii) A portfolio security ceases to be an eligible security (*e.g.*, no longer presents minimal credit risks); or

* * * * *

(g) * * *

(3) *Ongoing review of credit risks*. The written procedures must require the adviser to provide ongoing review of whether each security (other than a government security) continues to present minimal credit risks. The review must:

(i) Include an assessment of each security's credit quality, including the issuer's capacity to meet its short-term financial obligations; and

(ii) Be based on, among other things, financial data of the issuer of the portfolio security or provider of the guarantee or demand feature, as the case may be, and in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (e)(2)(iii) of this section, whether such data is publicly available or provided under the terms of the security's governing documents.

* * * * *

(8) * * *

(i) * * *

(B) An event indicating or evidencing credit deterioration, such as a downgrade or default, of particular portfolio security positions, each representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions;

* * * * *

(h) * * *

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record must be maintained and preserved in an easily accessible place of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks at the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks.

* * * * *

3. Section 12d3-1(d)(7)(v) is amended by removing the phrase "§§ 270.2a-7(a)(8)

and 270.2a-7(a)(15)" and adding in its place the phrase "§§ 270.2a-7(a)(9) and 270.2a-7(a)(16)";

4. Section 31a-1(b)(1) is amended by removing the phrase "(as defined in § 270.2a-7(a)(8) or § 270.2a-7(a)(15) respectively)" and adding in its place the phrase "(as defined in § 270.2a-7(a)(9) or "§ 270.2a-7(a)(16) respectively)".

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

*   *   *   *   *

4. Form N-MFP (referenced in § 274.201) is amended by:

a. Revising Item C.9;

b. Revising Item C.10;

d. Removing Items C.14.b and C.14.c;

e. Redesignating Items C.14.d through C.14.f as Items C.14.b through C.14 d;

f. Adding new Item C.14.e;

g. Removing Items C.15.b and C.15.c;

h. Redesignating Item C.15.d as Item C.15.b;

i. Adding new Item C.15.c;

j. Removing Items C.16.c and C.16.d;

k. Redesignating Item C.16.e as Items C.16.c; and

l. Adding new Item C.16.d.

The revisions read as follows:

Note: The text of Form N-MFP does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-MFP

* * * * *

Item C.9 Is the security an Eligible Security? [Y/N]

Item C.10 Security rating(s) considered. Provide each rating assigned by any NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO), and any other NRSRO rating that the fund's board of directors considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO). If none, leave blank.

* * * * *

Item C.14 * * *

e. Rating(s) considered. Provide each rating assigned to the demand feature(s) or demand feature provider(s) by any NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO), and any other NRSRO rating assigned to the demand feature(s) or demand feature provider(s) that the board of directors considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

* * * * *

Item C.15 * * *

c. Rating(s) considered. Provide each rating assigned to the guarantee(s) or guarantor(s) by any NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO), and any other NRSRO rating assigned to the guarantee(s) or guarantor(s) that the board of directors considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

Item C.16 * * *

d. Rating(s) considered. Provide each rating assigned to the enhancement(s) or enhancement provider(s) by any NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO), and any other NRSRO rating assigned to the enhancement(s) or enhancement provider(s) that the board of directors considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Dated: July 23, 2014

Commissioner Stein
Commissioner Piwowar
Disapproved

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, 274 and 279

Release No. 33-9616, IA-3879; IC-31166; FR-84; File No. S7-03-13

RIN 3235-AK61

Money Market Fund Reform; Amendments to Form PF

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is adopting amendments to the rules that govern money market mutual funds (or "money market funds") under the Investment Company Act of 1940 ("Investment Company Act" or "Act"). The amendments are designed to address money market funds' susceptibility to heavy redemptions in times of stress, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving, as much as possible, their benefits. The SEC is removing the valuation exemption that permitted institutional non-government money market funds (whose investors historically have made the heaviest redemptions in times of stress) to maintain a stable net asset value per share ("NAV"), and is requiring those funds to sell and redeem shares based on the current market-based value of the securities in their underlying portfolios rounded to the fourth decimal place (*e.g.*, \$1.0000), *i.e.*, transact at a "floating" NAV. The SEC also is adopting amendments that will give the boards of directors of money market funds new tools to stem heavy redemptions by giving them discretion to impose a liquidity fee if a fund's weekly liquidity level falls below the required regulatory threshold, and giving them discretion to suspend redemptions temporarily, *i.e.*, to "gate" funds, under the same circumstances. These amendments will require all non-government money

market funds to impose a liquidity fee if the fund's weekly liquidity level falls below a designated threshold, unless the fund's board determines that imposing such a fee is not in the best interests of the fund. In addition, the SEC is adopting amendments designed to make money market funds more resilient by increasing the diversification of their portfolios, enhancing their stress testing, and improving transparency by requiring money market funds to report additional information to the SEC and to investors. Finally, the amendments require investment advisers to certain large unregistered liquidity funds, which can have many of the same economic features as money market funds, to provide additional information about those funds to the SEC.

DATES: Effective Date: [Insert date 60 days after publication in the Federal Register.]

Compliance Dates: The applicable compliance dates are discussed in section III.N. of the Release titled "Compliance Dates."

FOR FURTHER INFORMATION CONTACT: Adam Bolter, Senior Counsel; Amanda Hollander Wagner, Senior Counsel; Andrea Ottomanelli Magovern, Senior Counsel; Erin C. Loomis, Senior Counsel; Kay-Mario Vobis, Senior Counsel; Thoreau A. Bartmann, Branch Chief; Sara Cortes, Senior Special Counsel; or Sarah G. ten Siethoff, Assistant Director, Investment Company Rulemaking Office, at (202) 551-6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rules 419 [17 CFR 230.419] and 482 [17 CFR 230.482] under the Securities Act of 1933 [15 U.S.C. 77a – z-3] ("Securities Act"), rules 2a-7 [17 CFR 270.2a-7], 12d3-1 [17 CFR 270.12d3-1], 18f-3 [17 CFR 270.18f-3], 22e-3 [17 CFR 270.22e-3], 30b1-7 [17 CFR 270.30b1-7], 31a-1 [17 CFR 270.31a-1], and new rule 30b1-8 [17 CFR 270.30b1-8] under the Investment Company Act of

1940 [15 U.S.C. 80a], Form N-1A under the Investment Company Act and the Securities Act, Form N-MFP under the Investment Company Act, and section 3 of Form PF under the Investment Advisers Act [15 U.S.C. 80b], and new Form N-CR under the Investment Company Act.[1]

TABLE OF CONTENTS

[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a-7, will be to Title 17, Part 270 of the Code of Federal Regulations 17 CFR 270.

I. INTRODUCTION

Money market funds are a type of mutual fund registered under the Investment Company Act and regulated pursuant to rule 2a-7 under the Act.[2] Money market funds generally pay dividends that reflect prevailing short-term interest rates, are redeemable on demand, and, unlike other investment companies, seek to maintain a stable NAV, typically $1.00.[3] This combination

2 Money market funds are also sometimes called "money market mutual funds" or "money funds."

3 *See generally* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] ("1983 Adopting Release"). Most money market funds seek to maintain a stable NAV of $1.00, but a few seek to maintain a stable NAV of a different amount, *e.g.*, $10.00. For convenience, throughout this Release, the discussion will simply refer to the stable NAV of $1.00 per share.

of principal stability, liquidity, and payment of short-term yields has made money market funds popular cash management vehicles for both retail and institutional investors. As of February 28, 2014, there were approximately 559 money market funds registered with the Commission, and these funds collectively held over $3.0 trillion of assets.[4]

Absent an exemption, as required by the Investment Company Act, all registered mutual funds must price and transact in their shares at the current NAV, calculated by valuing portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the fund's board of directors (*i.e.*, use a floating NAV).[5] In 1983, the Commission codified an exemption to this requirement allowing money market funds to value their portfolio securities using the "amortized cost" method of valuation and to use the "penny-rounding" method of pricing.[6] Under the amortized cost method, a money market fund's portfolio securities generally are valued at cost plus any amortization of premium or accumulation of discount, rather than at their value based on current market factors.[7] The penny

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4 Based on Form N-MFP data. SEC regulations require that money market funds report certain portfolio information on a monthly basis to the SEC on Form N-MFP. *See* rule 30b1-7.

5 *See* section 2(a)(41)(B) of the Act and rules 2a-4 and 22c-1. The Commission, however, has stated that it would not object if a mutual fund board of directors determines, in good faith, that the value of debt securities with remaining maturities of 60 days or less is their amortized cost, unless the particular circumstances warrant otherwise. *See* Accounting Series Release No. 219, Valuation of Debt Instruments by Money Market Funds and Certain Other Open- End Investment Companies, Financial Reporting Codification (CCH) section 404.05.a and .b (May 31, 1977) ("ASR 219"). We further discuss the use of amortized cost valuation by mutual funds in section III.B.5 below.

6 *See* 1983 Adopting Release, *supra* note 3. Section 6(c) of the Investment Company Act provides the Commission with broad authority to exempt persons, securities or transactions from any provision of the Investment Company Act, or the regulations thereunder, if, and to the extent that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* Commission Policy and Guidelines for Filing of Applications for Exemption, SEC Release No. IC-14492 (Apr. 30, 1985).

7 *See* current rule 2a-7(a)(2). *See also supra* note 5. Throughout this Release when we refer to a rule as it exists prior to any amendments we are making today it is described as a "current rule" while references to a rule as amended (or one that is not being amended today) are to "rule."

rounding method of pricing permits a money market fund when pricing its shares to round the fund's NAV to the nearest one percent (*i.e.*, the nearest penny).[8] Together, these valuation and pricing techniques create a "rounding convention" that permits a money market fund to sell and redeem shares at a stable share price without regard to small variations in the value of the securities in its portfolio.[9] Other types of mutual funds not regulated by rule 2a-7 generally must calculate their daily NAVs using market-based factors and cannot use penny rounding.

When the Commission initially established the regulatory framework allowing money market funds to maintain a stable share price through use of the amortized cost method of valuation and/or the penny rounding method of pricing (so long as they abided by certain risk-limiting conditions), it did so understanding the benefits that stable value money market funds provided as a cash management vehicle, particularly for smaller investors, and focused on minimizing dilution of assets and returns for shareholders.[10] At that time, the Commission was persuaded that deviations of a magnitude that would cause material dilution generally would not occur given the risk-limiting conditions of the exemptive rule.[11] As discussed throughout this

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8 *See* current rule 2a-7(a)(20).

9 Today, money market funds use a combination of the two methods so that, under normal circumstances, they can use the penny rounding method to maintain a price of $1.00 per share without pricing to the third decimal place like other mutual funds, and use the amortized cost method so that they need not strike a daily market-based NAV to facilitate intra-day transactions. *See infra* section III.A.1.a.

10 *See* Proceedings before the Securities and Exchange Commission in the Matter of InterCapital Liquid Asset Fund, Inc. et al., 3-5431, Dec. 28, 1978, at 1533 (Statement of Martin Lybecker, Division of Investment Management at the Securities and Exchange Commission) (stating that Commission staff had learned over the course of the hearings the strong preference of money market fund investors to have a stable share price and that with the right risk-limiting conditions, the Commission could limit the likelihood of a deviation from that stable value, addressing Commission concerns about dilution); 1983 Adopting Release, *supra* note 3, at nn.42-43 and accompanying text ("[T]he provisions of the rule impose obligations on the board of directors to assess the fairness of the valuation or pricing method and take appropriate steps to ensure that shareholders always receive their proportionate interest in the money market fund.").

11 *See id.*, at nn.41-42 and accompanying text (noting that witnesses from the original money market fund exemptive order hearings testified that the risk-limiting conditions, short of extraordinarily adverse

Release, our historical experience with these funds, and the events of the 2007-2009 financial crisis[12], has led us to re-evaluate the exemptive relief provided under rule 2a-7, including the exemption from the statutory floating NAV for some money market funds.

Under rule 2a-7, money market funds seek to maintain a stable share price by limiting their investments to short-term, high-quality debt securities that fluctuate very little in value under normal market conditions. In exchange for the ability to rely on the exemptions provided by rule 2a-7, money market funds are subject to conditions designed to limit deviations between the fund's $1.00 stable share price and the market-based NAV of the fund's portfolio.[13] Rule 2a-7 requires that money market funds maintain a significant amount of liquid assets and invest in securities that meet the rule's credit quality, maturity, and diversification requirements.[14] For example, a money market fund's portfolio securities must meet certain credit quality standards, such as posing minimal credit risks.[15] The rule also places restrictions on the remaining maturity of securities in the fund's portfolio to limit the interest rate and credit spread risk to which a money market fund may be exposed. A money market fund generally may not acquire any security with a remaining maturity greater than 397 days, the dollar-weighted average maturity of the securities owned by the fund may not exceed 60 days, and the fund's dollar-weighted

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conditions in the market, should ensure that a properly managed money market fund should be able to maintain a stable price per share and that rule 2a-7 is based on that representation).

12 Throughout this release, unless indicated otherwise, when we use the term "financial crisis" we are referring to the financial crisis that took place between 2007 and 2009.

13 Throughout this Release, we generally use the term "stable share price" to refer to the stable share price that money market funds seek to maintain and compute for purposes of distribution, redemption, and repurchases of fund shares.

14 *See* current rule 2a-7(c)(2), (3), (4), and (5).

15 *See* current rule 2a-7(a)(12), (c)(3)(i).

average life to maturity may not exceed 120 days.[16] Money market funds also must maintain sufficient liquidity to meet reasonably foreseeable redemptions, generally must invest at least 10% of their portfolios in assets that can provide daily liquidity, and invest at least 30% of their portfolios in assets that can provide weekly liquidity, as defined under the rule.[17] Finally, rule 2a-7 also requires money market funds to diversify their portfolios by generally limiting the funds to investing no more than 5% of their portfolios in any one issuer and no more than 10% of their portfolios in securities issued by, or subject to guarantees or demand features (*i.e.*, puts) from, any one institution.[18]

Rule 2a-7 also includes certain procedural standards overseen by the fund's board of directors. These include the requirement that the fund periodically calculate the market-based value of the portfolio ("shadow price")[19] and compare it to the fund's stable share price; if the deviation between these two values exceeds ½ of 1 percent (50 basis points), the fund's board of directors must consider what action, if any, should be taken by the board, including whether to re-price the fund's securities above or below the fund's $1.00 share price (an event colloquially known as "breaking the buck").[20]

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16 Current Rule 2a-7(c)(2).

17 *See* current rule 2a-7(c)(5). As we discussed when we amended rule 2a-7 in 2010, the 10% daily liquid asset requirement does not apply to tax-exempt funds. *See* Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] ("2010 Adopting Release"). *See infra* section III.E.3.

18 *See* current rule 2a-7(c)(4). Because of limited availability of the securities in which they invest, tax-exempt funds have different diversification requirements under rule 2a-7 than other money market funds.

19 *See* current rule 2a-7(c)(8)(ii)(A).

20 *See* current rule 2a-7(c)(8)(ii)(A) and (B). Regardless of the extent of the deviation, rule 2a-7 imposes on the board of a money market fund a duty to take appropriate action whenever the board believes the extent of any deviation may result in material dilution or other unfair results to investors or current shareholders. Current rule 2a-7(c)(8)(ii)(C). In addition, the money market fund can use the amortized cost or penny-

Different types of money market funds have been introduced to meet the different needs of money market fund investors. Historically, most investors have invested in "prime money market funds," which generally hold a variety of taxable short-term obligations issued by corporations and banks, as well as repurchase agreements and asset-backed commercial paper.[21] "Government money market funds" principally hold obligations of the U.S. government, including obligations of the U.S. Treasury and federal agencies and instrumentalities, as well as repurchase agreements collateralized by government securities. Some government money market funds limit their holdings to only U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury securities and are called "Treasury money market funds." Compared to prime funds, government and Treasury money market funds generally offer greater safety of principal but historically have paid lower yields. "Tax-exempt money market funds" primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from federal income tax.[22]

We first begin by reviewing the role of money market funds and the benefits they provide investors. We then review the economics of money market funds. This includes a discussion of several features of money market funds that, when combined, can create incentives for fund shareholders to redeem shares during periods of stress, as well as the potential impact that such

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rounding methods only as long as the board of directors believes that they fairly reflect the market-based NAV. *See* rule 2a-7(c)(1).

21 *See* INVESTMENT COMPANY INSTITUTE, 2014 INVESTMENT COMPANY FACT BOOK, at 196, Table 37 (2014), *available at* http://www.ici.org/pdf/2014_factbook.pdf.

22 Unless the context indicates otherwise, references to "prime funds" throughout this Release include funds that are often referred to as "tax-exempt" or "municipal" funds. We discuss the particular features of such tax-exempt funds and why they are included in our reforms in detail in section III.C.3.

redemptions can have on the fund and the markets that provide short-term financing.[23] We then discuss money market funds' experience during the financial crisis against this backdrop. We next analyze our 2010 reforms and their impact on the heightened redemption activity during the 2011 Eurozone sovereign debt crisis and 2011 and 2013 U.S. debt ceiling impasses.

We used the analyses available to us, including the critically important analyses contained in the report responding to certain questions posed by Commissioners Aguilar, Paredes, and Gallagher ("DERA Study")[24], in designing the reform proposals that we issued in 2013 for additional regulation of money market funds.[25] The 2013 proposal sought to address certain features in money market funds that can make them susceptible to heavy redemptions, by providing money market funds with better tools to manage and mitigate potential contagion from high levels of redemptions, increasing the transparency of their risks, and improving risk sharing among investors, and also to preserve the ability of money market funds to function as an effective and efficient cash management tool for investors,.[26]

We received over 1,400 comments[27] on the proposal from a variety of interested parties including money market funds, investors, banks, investment advisers, government

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23 Throughout this Release, we generally refer to "short-term financing markets" to describe the markets for short-term financing of corporations, banks, and governments.

24 *See* Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, a report by staff of the Division of Risk, Strategy, and Financial Innovation (Nov. 30, 2012), *available at* http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf. The Division of Risk, Strategy, and Financial Innovation ("RSFI") is now known as the Division of Economic and Risk Analysis ("DERA"), and accordingly we are no longer referring to this study as the "RSFI Study" as we did in the Proposing Release, but instead as the "DERA Study."

25 *See* Money Market Fund Reform; Amendments to Form PF, Release Nos. 33-9408; IA-3616; IC-30551 (June 5, 2013) [78 FR 36834, (June 19, 2013)] ("Proposing Release").

26 The 2013 proposal also included amendments that would apply under each alternative, with additional changes to money market fund disclosure, diversification limits, and stress testing, among other reforms. *See* Proposing Release, *supra* note 25. We discuss these amendments below.

27 Of these, more than 230 were individualized letters, and the rest were one of several types of form letters.

representatives, academics, and others.[28] As discussed in greater detail in each section of this Release below, these commenters expressed a diversity of views. Many commenters expressed concern about the consequences of requiring a floating NAV for certain money market funds, suggesting, among other reasons, that it was a significant reform that would remove one of the most desirable features of these funds, and would impose numerous costs and operational burdens. However, others expressed support, noting that it was a targeted solution aimed at curbing the risks associated with the money market funds most susceptible to destabilizing runs. Most commenters supported requiring the imposition of liquidity fees and redemption gates in certain circumstances, suggesting that they would prevent runs at a minimal cost. However, commenters also noted that fees and gates alone would not resolve certain of the features of money market funds that can incentivize heavy redemptions. Many commenters opposed combining the two alternatives into a single package, arguing that requiring money market funds to implement both reforms could decrease the utility of money market funds to investors. Commenters generally supported many of the other reforms we proposed, such as enhanced disclosure, new portfolio reporting requirements for large unregistered liquidity funds, and amendments to fund diversification requirements.

Today, after consideration of the comments received, we are removing the valuation exemption that permits institutional non-government money market funds (whose investors have historically made the heaviest redemptions in times of market stress) to maintain a stable NAV, and are requiring those funds to sell and redeem their shares based on the current market-based

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[28] Unless otherwise stated, all references to comment letters in this Release are to letters submitted on the Proposing Release in file no. s7-03-13 and are available at http://www.sec.gov/comments/s7-03-13/s70313.shtml.

value of the securities in their underlying portfolios rounded to the fourth decimal place (*e.g.*, \$1.0000), *i.e.*, transact at a "floating" NAV. We also are adopting amendments that will give the boards of directors of money market funds new tools to stem heavy redemptions by giving them discretion to impose a liquidity fee of no more than 2% if a fund's weekly liquidity level falls below the required regulatory amount, and are giving them discretion to suspend redemptions temporarily, *i.e.*, to "gate" funds, under the same circumstances. These amendments will require all non-government money market funds to impose a liquidity fee of 1% if the fund's weekly liquidity level falls below 10% of total assets, unless the fund's board determines that imposing such a fee is not in the best interests of the fund (or that a higher fee up to 2% or a lower fee is in the best interests of the fund). In addition, we are adopting amendments designed to make money market funds more resilient by increasing the diversification of their portfolios, enhancing their stress testing, and increasing transparency by requiring them to report additional information to us and to investors. Finally, the amendments require investment advisers to certain large unregistered liquidity funds, which can have similar economic features as money market funds, to provide additional information about those funds to us.[29]

II. BACKGROUND

A. Role of Money Market Funds

As we discussed in the Proposing Release, the combination of principal stability, liquidity, and short-term yields offered by money market funds, which is unlike that offered by other types of mutual funds, has made money market funds popular cash management vehicles

29 We note that we have consulted and coordinated with the Consumer Financial Protection Bureau regarding this final rulemaking in accordance with section 1027(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

for both retail and institutional investors.[30] Money market funds' ability to maintain a stable share price contributes to their popularity. The funds' stable share price facilitates their role as a cash management vehicle, provides tax and administrative convenience to both money market funds and their shareholders, and enhances money market funds' attractiveness as an investment option.[31] Due to their popularity with investors, money market fund assets have grown over time, providing them with substantial amounts of cash to invest. As a result, money market funds have become an important source of financing in certain segments of the short-term financing markets. As a result, rule 2a-7, in addition to facilitating money market funds' maintenance of stable share prices, also benefits investors by making available an investment option that provides an efficient and diversified means for investors to participate in the short-term financing markets through a portfolio of short-term, high-quality debt securities.[32]

In order for money market funds to use techniques to value and price their shares generally not permitted to other mutual funds, rule 2a-7 imposes additional protective conditions on money market funds.[33] As discussed in the Proposing Release, these additional conditions are

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30 *See* Proposing Release *supra* note 25, at section II.A. Retail investors use money market funds for a variety of reasons, including, for example, to hold cash for short or long periods of time or to take a temporary "defensive position" in anticipation of declining equity markets. Institutional investors commonly use money market funds for cash management in part because, as discussed later in this Release, money market funds provide efficient diversified cash management due both to the scale of their operations and money market fund managers' expertise. *See infra* notes 63-64 and accompanying text.

31 *See, e.g.*, Comment Letter of UBS Global Asset Management (Sept 16, 2013) ("UBS Comment Letter") ("Historically, money funds have offered both retail and institutional investors a means of achieving a market rate of return on short-term investment without having to sacrifice stability of principal. The stable NAV per share also allows investors the convenience of not having to track immaterial gains and losses, and helps facilitate investment processes, such as sweep account arrangements…").

32 *See, e.g.*, Comment Letter of the Investment Company Institute (Sept 17, 2013) ("ICI Comment Letter") ("Today over 61 million retail investors, as well as corporations, municipalities, and institutional investors rely on the $2.6 trillion money market fund industry as a low cost, efficient cash management tool that provides a high degree of liquidity, stability of principal value, and a market based yield.").

33 *See, e.g.*, ICI Comment Letter ("Money market funds owe their success, in large part to the stringent

designed to make money market funds' use of the valuation and pricing techniques permitted by rule 2a-7 consistent with the protection of investors, and more generally, to make available an investment option for investors that seek an efficient way to obtain short-term yields.

We understand, and considered when developing the final amendments we are adopting today, that money market funds are a popular investment product and that they provide many benefits to investors and to the short-term financing markets. Indeed, it is for these reasons that we designed these amendments to make the funds more resilient, as discussed throughout this Release, while preserving, to the extent possible, the benefits of money market funds. But as discussed in section III.K.1 below, we recognize that these reforms may make certain money market funds less attractive to some investors.

B. Certain Economic Features of Money Market Funds

As discussed in detail in the Proposing Release, the combination of several features of money market funds can create an incentive for their shareholders to redeem shares heavily in periods of market stress. We discuss these factors below, as well as the harm that can result from such heavy redemptions in money market funds.

1. Money Market Fund Investors' Desire to Avoid Loss

Investors in money market funds have varying investment goals and tolerances for risk. Many investors use money market funds for principal preservation and as a cash management tool, and, consequently, these funds can attract investors who are less tolerant of incurring even small losses, even at the cost of forgoing higher expected returns.[34] Such investors may be loss

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regulatory requirements to which they are subject under federal securities laws, including most notably Rule 2a-7 under the Investment Company Act.").

34 *See, e.g.*, PWG Comment Letter of Investment Company Institute (Apr. 19, 2012) (available in File No.

averse for many reasons, including general risk tolerance, legal or investment restrictions, or short-term cash needs. These overarching considerations may create incentives for money market investors to redeem and would be expected to persist, even if the other incentives discussed below, such as those created by money market fund valuation and pricing, are addressed.

The desire to avoid loss may cause investors to redeem from money market funds in times of stress in a "flight to quality." For example, as discussed in the DERA Study, one explanation for the heavy redemptions from prime money market funds and purchases in government money market fund shares during the financial crisis may be a flight to quality, given that most of the assets held by government money market funds have a lower default risk than the assets of prime money market funds.[35]

2. *Liquidity Risks*

When investors begin to redeem a substantial amount of shares, a fund can experience a loss of liquidity. Money market funds, which offer investors the ability to redeem shares upon demand, often will first use internal liquidity to satisfy substantial redemptions. A money market fund has three sources of internal liquidity to meet redemption requests: cash on hand, cash from

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4-619) ("ICI Apr. 2012 PWG Comment Letter") (enclosing a survey commissioned by the Investment Company Institute and conducted by Treasury Strategies, Inc. finding, among other things, that 94% of respondents rated safety of principal as an "extremely important" factor in their money market fund investment decisions and 64% ranked safety of principal as the "primary driver" of their money market fund investment).

35 One study documented that investors redirected assets from prime money market funds into government money market funds during September 2008. *See* Russ Wermers, et al., *Runs on Money Market Funds* (Jan. 2, 2013), *available at* http://www.rhsmith.umd.edu/files/Documents/Centers/CFP/WermersMoneyFundRuns.pdf ("Wermers Study"). Another study found that redemption activity in money market funds during the financial crisis was higher for riskier money market funds. *See* Patrick E. McCabe, *The Cross Section of Money Market Fund Risks and Financial Crises*, Federal Reserve Board Finance and Economic Discussion Series Paper No. 2010-51 (2010) ("Cross Section").

investors purchasing shares, and cash from maturing securities. If these internal sources of liquidity are insufficient to satisfy redemption requests on any particular day, money market funds may be forced to sell portfolio securities to raise additional cash.[36] And because the secondary market for many portfolio securities is not deeply liquid, funds may have to sell securities at a discount from their amortized cost value, or even at fire-sale prices,[37] thereby incurring additional losses that may have been avoided if the funds had sufficient internal liquidity.[38] This alone can cause a fund's portfolio to lose value. In addition, redemptions that deplete a fund's most liquid assets can have incremental adverse effects because the fund is left with fewer liquid assets, necessitating the sale of less liquid assets, potentially at a discount, to meet further redemption requests.[39] Knowing that such liquidity costs may occur, money market fund investors may have an incentive to redeem quickly in times of stress to avoid realizing these

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36 *See, e.g.*, Comment Letter of Goldman Sachs Asset Management L.P. (Sept. 17, 2013) ("Goldman Sachs Comment Letter") ("A money fund faced with heavy redemptions could suffer a loss of liquidity that would force the untimely sale of portfolio securities at losses."). We note that, although the Investment Company Act permits a money market fund to borrow money from a bank, *see* section 18(f) of the Investment Company Act, such loans, assuming the proceeds of which are paid out to meet redemptions, create liabilities that must be reflected in the fund's shadow price, and thus will contribute to the stresses that may force the fund to "break the buck."

37 Money market funds normally meet redemptions by disposing of their more liquid assets, rather than selling a pro rata slice of all their holdings. *See, e.g.*, Jonathan Witmer, *Does the Buck Stop Here? A Comparison of Withdrawals from Money Market Mutual Funds with Floating and Constant Share Prices*, Bank of Canada Working Paper 2012-25 (Aug. 2012) ("Witmer"), *available at* http://www.bankofcanada.ca/wp-content/uploads/2012/08/wp2012-25.pdf. "Fire sales" refer to situations when securities deviate from their information-efficient values typically as a result of sale price pressure. For an overview of the theoretical and empirical research on asset "fire sales," *see* Andrei Shleifer & Robert Vishny, *Fire Sales in Finance and Macroeconomics*, 25 JOURNAL OF ECONOMIC PERSPECTIVES, Winter 2011, at 29-48 ("*Fire Sales*").

38 The DERA Study examined whether money market funds are more resilient to redemptions following the 2010 reforms and notes that, "As expected, the results show that funds with a 30 percent [weekly liquid asset requirement] are more resilient to both portfolio losses and investor redemptions" than those funds without a 30 percent weekly liquid asset requirement. DERA Study, *supra* note 24, at 37.

39 *See, e.g.*, Comment Letter of MSCI Inc. (Sept. 17, 2013) ("MSCI Comment Letter") ("The need to provide liquidity provides another set of incentives, as early redeemers may exhaust the fund's internal sources of liquidity (cash on hand, cash from maturing securities, etc.), leaving possibly distressed security sales as the only source of liquidity for late redeemers.").

potential liquidity costs, leaving remaining shareholders to bear these costs.

3. *Valuation and Pricing Methods*

Money market funds are unique among mutual funds in that rule 2a-7 permits them to use the amortized cost method of valuation and the penny-rounding method of pricing for their entire portfolios. As discussed above, these valuation and pricing techniques allow a money market fund to sell and redeem shares at a stable share price without regard to small variations in the value of the securities in its portfolio, and thus to maintain a stable $1.00 share price under most market conditions.

Although the stable $1.00 share price calculated using these methods provides a close approximation to market value under normal market conditions, differences may exist when market conditions shift due to changes in interest rates, credit risk, and liquidity.[40] The market value of a money market fund's portfolio securities also may experience relatively large changes if a portfolio asset defaults or its credit profile deteriorates.[41] Today, unless the fund "breaks the buck," market value differences are reflected only in a fund's shadow price, and not the share price at which the fund satisfies purchase and redemption transactions.

Deviations that arise from changes in interest rates and credit risk are temporary as long as securities are held to maturity, because amortized cost values and market-based values converge at maturity. But if a portfolio asset defaults or an asset sale results in a realized capital

40 We note that the vast majority of money market fund portfolio securities are not valued based on market prices obtained through secondary market trading because most portfolio securities such as commercial paper, repos, and certificates of deposit are not actively traded in a secondary market. Accordingly, most money market fund portfolio securities are valued largely through "mark-to-model" or "matrix pricing" estimates, which often use market inputs, as well as other factors in their pricing models. *See* Proposing Release, *supra* note 25, at n.27. *See also infra* section III.D.2.

41 The credit quality standards in rule 2a-7 are designed to minimize the likelihood of such a default or credit deterioration.

gain or loss, deviations between the stable $1.00 share price and the shadow price become permanent. For example, if a portfolio experiences a 25 basis point loss because an issuer defaults, the fund's shadow price falls from $1.0000 to $0.9975. Even though the fund has not broken the buck, this reduction is permanent and can only be reversed internally in the event that the fund realizes a capital gain elsewhere in the portfolio, which generally is unlikely given the types of securities in which money market funds typically invest and the tax requirements for these funds.[42]

If a money market fund's shadow price deviates far enough from its stable $1.00 share price, investors may have an economic incentive to redeem their shares. For example, investors may have an incentive to redeem shares when a fund's shadow price is less than $1.00.[43] If investors redeem shares when the shadow price is less than $1.00, the fund's shadow price will decline even further because portfolio losses are spread across the remaining, smaller asset base. If enough shares are redeemed, a fund can "break the buck" due, in part, to heavy investor redemptions and the concentration of losses across a shrinking asset base.[44] In times of stress, this alone provides an incentive for investors to redeem shares ahead of other investors: early redeemers get $1.00 per share, whereas later redeemers *may* get less than $1.00 per share even if

42 In practice, a money market fund cannot use future portfolio earnings to restore its shadow price because Subchapter M of the Internal Revenue Code requires money market funds to distribute virtually all of their earnings to investors. These tax requirements can cause permanent reductions in shadow prices to persist over time, even if a fund's other portfolio securities are otherwise unimpaired.

43 *See, e.g.,* Comment Letter of the Systemic Risk Council (Sept. 16, 2013) ("Systemic Risk Council Comment Letter") ("If the fund's assets are worth less than a $1.00- and you can redeem at $1.00- the remaining shareholders are effectively paying first movers to run. This embeds permanent losses in the fund for the remaining holders.").

44 *See, e.g.,* MSCI Comment Letter ("[W]hen a fund's market-based NAV falls significantly below its stable NAV, an early redeemer not only benefits from this price discrepancy, but also puts downward pressure on the market-based NAV for the remaining investors (as the realized losses on the fund's assets must be shared across a smaller investor base).").

the fund experiences no further losses.[45]

We note that although defaults in assets held by money market funds are low probability events, the resulting losses can lead to a fund breaking the buck if the default occurs in a position that is greater than 0.5% of the fund's assets, as was the case in the Reserve Primary Fund's investment in Lehman Brothers commercial paper in September 2008.[46] And as discussed further in section III.C.2.a of this Release, money market funds hold significant numbers of such larger positions.[47]

4. *Investors' Misunderstanding about the Actual Risk of Investing in Money Market Funds*

Lack of investor understanding and lack of complete transparency concerning the risks posed by particular money market funds can contribute to heavy redemptions during periods of stress. This lack of investor understanding and complete transparency can come from several different sources.

First, if investors do not know a fund's shadow price and/or its underlying portfolio holdings (or if previous disclosures of this information are no longer accurate), investors may not be able to fully understand the degree of risk in the underlying portfolio.[48] In such an

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45 For an example illustrating this incentive, *see* Proposing Release, *supra* note 25, at text following n.31.

46 For a detailed discussion of the financial crises, *see generally* DERA Study, *supra* note 24, at section 4.A.

47 The Financial Stability Oversight Council ("FSOC"), in formulating possible money market reform recommendations, solicited and received comments from the public (FSOC Comment File, File No. FSOC-2012-0003, *available at* http://www.regulations.gov/#!docketDetail;D=FSOC-2012-0003), some of which have made similar observations about the concentration and size of money market fund holdings. *See, e.g.*, Comment Letter of Harvard Business School Professors Samuel Hanson, David Scharfstein, & Adi Sunderam (Jan. 8, 2013) ("Harvard Business School FSOC Comment Letter") (noting that "prime MMFs mainly invest in money-market instruments issued by large, global banks" and providing information about the size of the holdings of "the 50 largest non-government issuers of money market instruments held by prime MMFs as of May 2012").

48 *See, e.g.*, DERA Study, *supra* note 24, at 31 (stating that although disclosures on Form N-MFP have improved fund transparency, "it must be remembered that funds file the form on a monthly basis with no

environment, a default of a large-scale commercial paper issuer, such as a bank holding company, could accelerate redemption activity across many funds because investors may not know which funds (if any) hold defaulted securities. Investors may respond by initiating redemptions to avoid potential rather than actual losses in a "flight to transparency."[49] Because many money market funds hold securities from the same issuer, investors may respond to a lack of transparency about specific fund holdings by redeeming assets from funds that are believed to be holding the same or highly correlated positions.[50]

Second, money market funds' sponsors on a number of occasions have voluntarily chosen to provide financial support for their money market funds.[51] The reasons that sponsors

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interim updates," and that "[t]he Commission also makes the information public with a 60-day lag, which may cause it to be stale"). As discussed in section III.E.9.c, a number of money market funds have begun voluntarily disclosing information about their portfolio assets, liquidity, and shadow NAV on a more frequent basis than required, in part to address investor concerns regarding the staleness of information about fund holdings. The final amendments we are adopting today include a number of regulatory requirements designed to enhance transparency of money market risks, including daily disclosure of liquid assets, shareholder flows, current NAV and shadow NAV on fund websites, and elimination of the 60 day lag on public disclosure of Form N-MFP data. *See infra* section III.G.1.

49 *See* Nicolá Gennaioli, Andrei Shleifer & Robert Vishny, *Neglected Risks, Financial Innovation, and Financial Fragility*, 104 J. FIN. ECON. 453 (2012) ("A small piece of news that brings to investors' minds the previously unattended risks catches them by surprise and causes them to drastically revise their valuations of new securities and to sell them....When investors realize that the new securities are false substitutes for the traditional ones, they fly to safety, dumping these securities on the market and buying the truly safe ones.").

50 *See* Comment Letter of Federal Reserve of Boston (Sept. 12, 2013) ("Boston Federal Reserve Comment Letter") ("Investors in other MMMFs may in turn run if they perceive that their funds are similar (*e.g.* similar portfolio composition, similar maturity profile, similar investor concentration) to the fund that experienced the initial run."); *see infra* notes 58-59 and accompanying text. Based on Form N-MFP data as of February 28, 2014, there were 27 different issuers whose securities were held by more than 100 prime money market funds.

51 In the Proposing Release we requested comment on amending rule 17a-9 (which allows for discretionary support of money market funds by their sponsors and other affiliates) to potentially restrict the practice of sponsor support, but did not propose any specific changes. Most commenters who addressed our request for comment on amending rule 17a-9 opposed making any changes to rule 17a-9, arguing that the transactions facilitated by the rule are in the best interests of the shareholders. *See* Comment Letter of the Investment Company Institute (Sept 17, 2013) ("ICI Comment Letter"); Comment Letter of the Dreyfus Corporation (Sept. 17, 2013) ("Dreyfus Comment Letter"); Comment Letter of American Bar Association Business Law Section (Sept. 30, 2013) ("ABA Business Law Comment Letter"). One commenter

have done so include keeping a fund from re-pricing below its stable value, protecting the sponsors' reputations or brands, and increasing a fund's shadow price if its sponsor believes investors avoid funds that have low shadow prices. Prior to the changes that we are adopting today, funds were not required to disclose instances of sponsor support outside of financial statements; as a result, sponsor support has not been fully transparent to investors and this, in turn, may have lessened some investors' understanding of the risk in money market funds.[52]

Instances of discretionary sponsor support were relatively common during the financial crisis. For example, during the period from September 16, 2008 to October 1, 2008, a number of money market fund sponsors purchased large amounts of portfolio securities from their money market funds or provided capital support to the funds (or received staff no-action assurances in order to provide support).[53] But the financial crisis is not the only instance in which some money market funds have come under strain, although it is unique in the number of money market funds

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supported amending rule 17a-9, arguing that these transactions can result in shareholders having unjustified expectations of future support being provided by sponsors. Comment Letter of HSBC Global Asset Management (Sept. 17, 2013) ("HSBC Comment Letter"). In light of these comments, we are not amending rule 17a-9 at this time. *See also infra* section III.E.7.a.

52 *See, e.g.*, HSBC Comment Letter ("[A] level of ambiguity about who owns the risk when investing in a MMF has developed amongst some investors. Some investors have been encouraged to *expect* sponsors to support their MMFs. Such expectations cannot be enforced, since managers are under no obligation to support their funds, and consequently leads some investors to misunderstand and misprice the risks they are subject to.") (emphasis in original).

53 Our staff estimated that during the period from August 2007 to December 31, 2008, almost 20% of all money market funds received some support (or staff no-action assurances concerning support) from their money managers or their affiliates. We note that not all such support required no-action assurances from Commission staff (for example, fund affiliates were able to purchase defaulted Lehman Brothers securities from fund portfolios under rule 17a-9 under the Investment Company Act without the need for any no-action assurances). *See, e.g.*, http://www.sec.gov/divisions/investment/im-noaction.shtml#money. Commission staff provided no-action assurances to 100 money market funds in 18 different fund groups so that the fund groups could enter into such arrangements. Although a number of advisers to money market funds obtained staff no-action assurances in order to provide sponsor support, several did not subsequently provide the support because it was not necessary. *See, e.g.*, Comment Letter of the Dreyfus Corporation (Aug. 7, 2012) (available in File No. 4 619) ("Dreyfus III Comment Letter") (stating that no-action relief to provide sponsor support "was sought by many money funds as a precautionary measure").

that requested or received sponsor support.[54] As noted in the Proposing Release, since 1989, 11 other financial events have been sufficiently adverse that certain fund sponsors chose to provide support or to seek staff no-action assurances in order to provide support, potentially affecting 158 different money market funds.[55]

Finally, the government assistance provided to money market funds during the financial crisis may have contributed to investors' perceptions that the risk of loss in money market funds is low.[56] If investors perceive that money market funds have an implicit government guarantee, they may believe that money market funds are safer investments than they in fact are and may underestimate the potential risk of loss.[57]

C. Effects on Other Money Market Funds, Investors, and the Short-Term Financing Markets

In this section, we discuss how stress at one money market fund can be positively correlated across money market funds in at least two ways. Some market observers have noted that if a money market fund suffers a loss on one of its portfolio securities—whether because of a deterioration in credit quality, for example, or because the fund sold the security at a discount to its amortized-cost value—other money market funds holding the same security may have to

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54 *See* Moody's Investors Service Special Comment, *Sponsor Support Key to Money Market Funds* (Aug. 9, 2010) ("Moody's Sponsor Support Report"). Interest rate changes, issuer defaults, and credit rating downgrades can lead to significant valuation losses for individual funds.

55 *See* Proposing Release, *supra* note 25, at section II.B.3. We note, as discussed more fully in the Proposing Release, that although these events affected money market funds and their sponsors, there is no evidence that these events caused systemic problems, most likely because the events were isolated either to a single entity or class of security and because sponsor support prevented any funds from breaking the buck.

56 For a further discussion of issues related to money market fund sponsor support and its effect on investors' perception, *see* Proposing Release, *supra* note 25, at nn.60-61 and accompanying text.

57 *See, e.g.,* HSBC Comment Letter.

reflect the resultant discounts in their shadow prices.[58] Any resulting decline in the shadow prices of other funds could, in turn, lead to a contagion effect that could spread even further as investors run from money market funds in general. For example, some commenters have observed that many money market fund holdings tend to be highly correlated, making it more likely that multiple money market funds will experience contemporaneous decreases in shadow prices.[59]

As discussed above, in times of stress, if investors do not wish to be exposed to a distressed issuer (or correlated issuers) but do not know which money market funds own these distressed securities at any given time, investors may redeem from any money market fund that could own the security (*e.g.*, redeeming from all prime funds).[60] A fund that did not own the security and was not otherwise under stress could nonetheless experience heavy redemptions which, as discussed above, could themselves ultimately cause the fund to experience losses if it does not have adequate liquidity.

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58 *See generally* Douglas W. Diamond & Raghuram G. Rajan, *Fear of Fire Sales, Illiquidity Seeking, and Credit Freezes,* 126 Q. J. ECON. 557 (May 2011); *Fire Sales, supra* note 37; Markus Brunnermeier, et al., *The Fundamental Principles of Financial Regulation, in* GENEVA REPORTS ON THE WORLD ECONOMY 11 (2009).

59 *See, e.g.*, Boston Federal Reserve Comment Letter (discussing the relative homogeneity of money market funds holdings, and noting that as of the end of June 2013, the 20 largest corporate issuers accounted for approximately 44 percent of prime money market funds' assets); Comment Letter of Americans for Financial Reform (Sept. 17, 2013) ("Americans for Fin. Reform Comment Letter") (discussing a study estimating that 97 percent of non-governmental assets of prime money market funds consists of financial sector commercial paper); Comment Letter of Better Markets, Inc. (Feb. 15, 2013) (available in File No. FSOC-2012-0003) ("Better Markets FSOC Comment Letter") (agreeing with FSOC's analysis and stating that "MMFs tend to have similar exposures due to limits on the nature of permitted investments. As a result, losses creating instability and a crisis of confidence in one MMF are likely to affect other MMFs at the same time.").

60 *See, e.g.*, Wermers Study, *supra* note 35 (based on an empirical analysis of data from the 2008 run on money market funds, finding that, during 2008, "[f]unds that cater to institutional investors, which are the most sophisticated and informed investors, were hardest hit," and that "investor flows from money market funds seem to have been driven both by strategic externalities...and information.").

As was experienced by money market funds during the financial crisis, liquidity-induced contagion may have negative effects on investors and the markets for short-term financing of corporations, banks, and governments. This is in large part because of the significance of money market funds' role in the short-term financing markets.[61] Indeed, money market funds had experienced steady growth before the financial crisis, driven in part by growth in the size of institutional cash pools, which grew from under $100 billion in 1990 to almost $4 trillion just before the financial crisis.[62] Money market funds' suitability for cash management operations also has made them popular among corporate treasurers, municipalities, and other institutional investors, some of which rely on money market funds for their cash management operations because the funds provide diversified cash management more efficiently due both to the scale of their operations and the expertise of money market fund managers.[63] For example, according to one survey, approximately 16% of organizations' short-term investments were allocated to money market funds (and, according to this survey, this figure is down from almost 40% in 2008 due in part to the reallocation of cash investments to bank deposits following temporary unlimited Federal Deposit Insurance Corporation deposit insurance for non-interest bearing bank

61 *See infra* section III.K.3 for statistics on the types and percentages of outstanding short-term debt obligations held by money market funds.

62 *See* Proposing Release *supra* note 25, at nn.70-71.

63 *See, e.g.*, U.S. Securities and Exchange Commission, *Roundtable on Money Market Funds and Systemic Risk*, unofficial transcript (May 10, 2011), *available at* http://www.sec.gov/spotlight/mmf-risk/mmf-risk-transcript-051011.htm ("Roundtable Transcript") (Kathryn L. Hewitt, Government Finance Officers Association) ("Most of us don't have the time, the energy, or the resources at our fingertips to analyze the credit quality of every security ourselves. So we're in essence, by going into a pooled fund, hiring that expertise for us...it gives us diversification, it gives us immediate cash management needs where we can move money into and out of it, and it satisfies much of our operating cash investment opportunities."); *see also* Proposing Release *supra* note 25, at n.72.

transaction accounts, which expired at the end of 2012).[64]

Money market funds' size and significance in the short-term markets, together with their features that can create an incentive to redeem as discussed above, have led to concerns that money market funds may contribute to systemic risk. Heavy redemptions from money market funds during periods of financial stress can remove liquidity from the financial system, potentially disrupting other markets. Issuers may have difficulty obtaining capital in the short-term markets during these periods because money market funds are focused on meeting redemption requests through internal liquidity generated either from maturing securities or cash from subscriptions, and thus may be purchasing fewer short-term debt obligations.[65] To the extent that multiple money market funds experience heavy redemptions, the negative effects on the short-term markets can be magnified. Money market funds' experience during the financial crisis illustrates the impact of heavy redemptions, as we discuss in more detail below.

64 *See* 2013 Association for Financial Professionals Liquidity Survey, at 15, *available at* http://www.afponline.org/liquidity (subscription required) ("2013 AFP Liquidity Survey"). The size of this allocation to money market funds is down substantially from prior years. For example, prior AFP Liquidity Surveys show higher allocations of organizations' short-term investments to money market funds: almost 40% in the 2008 survey, approximately 25% in the 2009 and 2010 surveys, almost 30% in the 2011 survey, and 16% in the 2012 survey. This shift has largely reflected a re-allocation of cash investments to bank deposits, which rose from representing 25% of organizations' short-term investment allocations in the 2008 Association for Financial Professionals Liquidity Survey, *available at* http://www.afponline.org/pub/pdf/2008_Liquidity_Survey.pdf ("2008 AFP Liquidity Survey"), to 50% of organizations' short-term investment allocations in the 2013 survey. The 2012 survey noted that some of this shift has been driven by the temporary unlimited FDIC deposit insurance coverage for non-interest bearing bank transaction accounts (which expired at the end of 2012) and in which assets have remained despite the expiration of the insurance. *See* 2013 AFP Liquidity Survey. As of February 28, 2014, approximately 67% of money market fund assets were held in money market funds or share classes intended to be sold to institutional investors according to iMoneyNet data. All of the AFP Liquidity Surveys are available at http://www.afponline.org.

65 *See supra* text preceding and accompanying note 36. Although money market funds also can build liquidity internally by retaining (rather than investing) cash from investors purchasing shares, this is not likely to be a material source of liquidity for a distressed money market fund experiencing heavy redemptions as a stressed fund may be unlikely to be receiving significant investor purchases during such a time.

Heavy redemptions in money market funds may disproportionately affect slow-moving shareholders because, as discussed further below, redemption data from the financial crisis show that some institutional investors are likely to redeem from distressed money market funds far more quickly than other investors and to redeem a greater percentage of their prime fund holdings.[66] This likely is because some institutional investors generally have more capital at stake, along with sophisticated tools and professional staffs to monitor risk. Because of their proportionally larger investments, just a few institutional investors submitting redemption requests may have a significant effect on a money market fund's liquidity, while it may take many more retail investors, with their typically smaller investments sizes, to cause similar negative consequences. Slower-to-redeem shareholders may be harmed because, as discussed above, redemptions at a money market fund can concentrate existing losses in the fund or create new losses if the fund must sell assets at a discount to obtain liquidity to satisfy redemption requests. In both cases, redemptions leave the fund's portfolio more likely to lose value, to the detriment of slower-to-redeem investors.[67] Retail investors—who tend to be slower moving—also could be harmed if market stress begins at an institutional money market fund and spreads to other funds, including funds composed solely or primarily of retail investors.[68]

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66 *See* Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] ("2009 Proposing Release"), at nn.46-48 and 178 and accompanying text.

67 *See, e.g.*, DERA Study, *supra* note 24, at 10 ("Investor redemptions during the financial crisis, particularly after Lehman's failure, were heaviest in institutional share classes of prime money market funds, which typically hold securities that are illiquid relative to government funds. It is possible that sophisticated investors took advantage of the opportunity to redeem shares to avoid losses, leaving less sophisticated investors (if co-mingled) to bear the losses.").

68 As discussed further below, retail money market funds experienced a lower level of redemptions in 2008 than institutional money market funds, although the full predictive power of this empirical evidence is tempered by the introduction of the Department of Treasury's ("Treasury Department") temporary guarantee program for money market funds, which may have prevented heavier shareholder redemptions among generally slower-to-redeem retail investors. *See infra* note 80.

D. The Financial Crisis

The financial crisis in many respects demonstrates the various considerations discussed above in sections B and C, including the potential implications and harm associated with heavy redemption from money market funds.[69] On September 16, 2008, the day after Lehman Brothers Holdings Inc. announced its bankruptcy, The Reserve Fund announced that its Primary Fund—which held a $785 million (or 1.2% of the fund's assets) position in Lehman Brothers commercial paper—would "break the buck" and price its securities at $0.97 per share.[70] At the same time, there was turbulence in the market for financial sector securities as a result of other financial company stresses, including, for example, the near failure of American International Group ("AIG"), whose commercial paper was held by many prime money market funds.[71]

Heavy redemptions in the Reserve Primary Fund were followed by heavy redemptions from other Reserve money market funds,[72] and soon other institutional prime money market funds also began to experience heavy redemptions.[73] During the week of September 15, 2008 (the week that Lehman Brothers announced it was filing for bankruptcy), investors withdrew

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69 *See generally* DERA Study, *supra* note 24, at section 3. *See also* 2009 Proposing Release *supra* note 66, at section I.D.

70 *See also* 2009 Proposing Release, *supra* note 66, at n.44 and accompanying text. We note that the Reserve Primary Fund's assets have been returned to shareholders in several distributions made over a number of years. We understand that assets returned constitute approximately 99% of the fund's assets as of the close of business on September 15, 2008, including the income earned during the liquidation period. *See, e.g.*, Consolidated Class Action Complaint, *In Re* The Reserve Primary Fund Sec. & Derivative Class Action Litig., No. 08-CV-8060-PGG (S.D.N.Y. Jan. 5, 2010). A class action suit brought on behalf of the Reserve Fund shareholders was settled in 2013. *See* Nate Raymond, *Settlement Reached in Reserve Primary Fund Lawsuit,* REUTERS (Sept 7, 2013) *available at* http://www.reuters.com/article/2013/09/07/us-reserveprimary-lawsuit-idUSBRE98604Q20130907.

71 In addition to Lehman Brothers and AIG, there were other stresses in the market as well, as discussed in greater detail in the DERA Study. *See generally* DERA Study, *supra* note 24, at section 3.

72 *See* 2009 Proposing Release, *supra* note 66, at section I.D.

73 *See* DERA Study, *supra* note 24, at section 3.

approximately $300 billion from prime money market funds or 14% of the assets in those funds.[74] During that time, fearing further redemptions, money market fund managers began to retain cash rather than invest in commercial paper, certificates of deposit, or other short-term instruments.[75] Short-term financing markets froze, impairing access to credit, and those who were still able to access short-term credit often did so only at overnight maturities.[76]

Figure 1, below, provides context for the redemptions that occurred during the financial crisis. Specifically, it shows daily total net assets over time, where the vertical line indicates the date that Lehman Brothers filed for bankruptcy, September 15, 2008. Investor redemptions during the financial crisis, particularly after Lehman's failure, were heaviest in institutional share classes of prime money market funds, which typically hold securities that are less liquid and of lower credit quality than those typically held by government money market funds. The figure shows that institutional share classes of government money market funds, which include Treasury and government funds, experienced heavy inflows.[77] The aggregate level of retail

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74 *See* INVESTMENT COMPANY INSTITUTE, REPORT OF THE MONEY MARKET WORKING GROUP, at 62 (Mar. 17, 2009), *available at* http://www.ici.org/pdf/ppr_09_mmwg.pdf ("ICI REPORT") (analyzing data from iMoneyNet). The latter figure describes aggregate redemptions from all prime money market funds. Some money market funds had redemptions well in excess of 14% of their assets. Based on iMoneyNet data (and excluding the Reserve Primary Fund), the maximum weekly redemptions from a money market fund during the financial crisis was over 64% of the fund's assets.

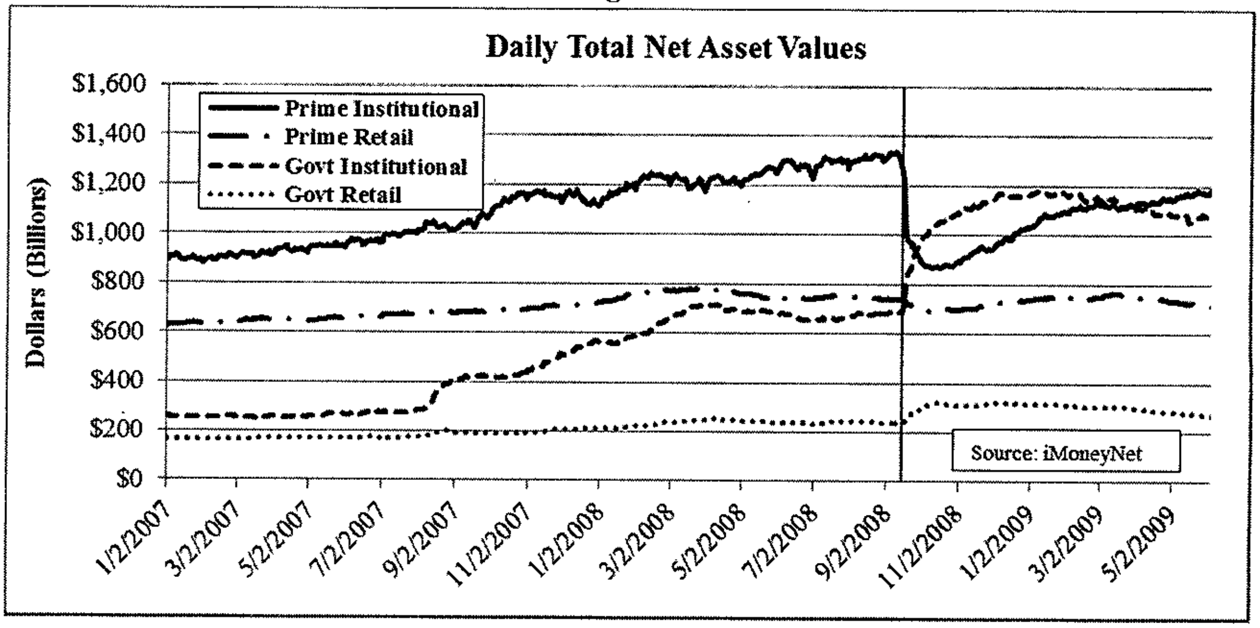
75 *See* Philip Swagel, "The Financial Crisis: An Inside View," Brookings Papers on Economic Activity, at 31 (Spring 2009) (conference draft), *available at* http://www.brookings.edu/~/media/projects/bpea/spring%202009/2009a_bpea_swagel.pdf; Christopher Condon & Bryan Keogh, *Funds' Flight from Commercial Paper Forced Fed Move*, BLOOMBERG, Oct. 7, 2008, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5hvnKFCC_pQ.

76 *See* 2009 Proposing Release, *supra* note 66, at nn.51-53 & 65-68 and accompanying text (citing to minutes of the Federal Open Market Committee, news articles, Federal Reserve Board data on commercial paper spreads over Treasury bills, and books and academic articles on the financial crisis). Commenters have stated that money market funds were not the only investors in the short-term financing markets that reduced or halted investment in commercial paper and other riskier short-term debt securities during the financial crisis. *See, e.g.*, Comment Letter of Investment Company Institute (Jan. 24, 2013) (available in File No. FSOC-2012-0003) ("ICI Jan. 24 FSOC Comment Letter").

77 As discussed in section III.C.1 government money market funds historically have faced different

investor redemption activity, in contrast, was not particularly high during September and October 2008, as shown in Figure 1.[78]

Figure 1



On September 19, 2008, the U.S. Department of the Treasury ("Treasury Department") announced a temporary guarantee program ("Temporary Guarantee Program"), which would use the $50 billion Exchange Stabilization Fund to support more than $3 trillion in shares of money market funds, and the Board of Governors of the Federal Reserve System authorized the temporary extension of credit to banks to finance their purchase of high-quality asset-backed commercial paper from money market funds.[79] These programs successfully slowed redemptions

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redemption pressures in times of stress and have different risk characteristics than other money market funds because of their unique portfolio composition, which typically have lower credit default risk and greater liquidity than non-government portfolio securities typically held by money market funds.

78 We understand that iMoneyNet differentiates retail and institutional money market funds based on factors such as minimum initial investment amount and how the fund provider self-categorizes the fund, which does not necessarily correlate with how we define retail funds in this Release.

79 *See* 2009 Proposing Release, *supra* note 66, at nn.55-59 and accompanying text for a fuller description of

in prime money market funds and provided additional liquidity to money market funds. As discussed in the Proposing Release, the disruptions to the short-term markets detailed above could have continued for a longer period of time but for these programs.[80]

E. Examination of Money Market Fund Regulation since the Financial Crisis

1. The 2010 Amendments

After the events of the financial crisis, in March 2010, we adopted a number of amendments to rule 2a-7.[81] These amendments were designed to make money market funds more resilient by reducing the interest rate, credit, and liquidity risks of fund asset portfolios.[82] More specifically, the amendments decreased money market funds' credit risk exposure by further restricting the amount of lower quality securities that funds can hold.[83] The amendments, for the first time, also required that money market funds maintain liquidity buffers in the form of

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the various forms of governmental assistance provided to money market funds during this time.

80 *See* Proposing Release *supra* note 25 at n.91.

81 2010 Adopting Release, *supra* note 17.

82 Commenters have noted the importance of the 2010 reforms in enhancing the resiliency of money market funds. *See, e.g.,* Comment Letter of Invesco Ltd. (Sept. 17, 2013) ("Invesco Comment Letter") ("In evaluating the reforms contained in the Proposed Rule it is also important to take into account the significant impact of the reforms implemented by the Commission in 2010, which amounted to a comprehensive overhaul of the regulatory framework governing MMFs.").

83 Specifically, the amendments placed tighter limits on a money market fund's ability to acquire "second tier" securities by (1) restricting a money market fund from investing more than 3% of its assets in second tier securities (rather than the previous limit of 5%), (2) restricting a money market fund from investing more than ½ of 1% of its assets in second tier securities issued by any single issuer (rather than the previous limit of the greater of 1% or $1 million), and (3) restricting a money market fund from buying second tier securities that mature in more than 45 days (rather than the previous limit of 397 days). *See* rule 2a-7(c)(3)(ii) and (c)(4)(i)(C). Second tier securities are eligible securities that, if rated, have received other than the highest short-term term debt rating from the requisite NRSROs or, if unrated, have been determined by the fund's board of directors to be of comparable quality. *See* current rule 2a-7(a)(24) (defining "second tier security"); current rule 2a-7(a)(12) (defining "eligible security"); current rule 2a-7(a)(23) (defining "requisite NRSROs"). Today, in a companion release, we are also re-proposing to remove NRSRO rating references from rule 2a-7 and Form N-MFP.

specified levels of daily and weekly liquid assets.[84] These liquidity buffers provide a source of internal liquidity and are intended to help funds withstand high levels of redemptions during times of market illiquidity. The amendments also reduce money market funds' exposure to interest rate risk by decreasing the maximum weighted average maturities of fund portfolios from 90 to 60 days.[85]

In addition to reducing the risk profile of the underlying money market fund portfolios, the reforms increased the amount of information that money market funds are required to report to the Commission and the public. Money market funds are now required to submit to the Commission monthly information on their portfolio holdings using Form N-MFP.[86] This information allows the Commission, investors, and third parties to monitor compliance with rule 2a-7 and to better understand and monitor the underlying risks of money market fund portfolios. Money market funds also are now required to post portfolio information on their websites each month, providing investors with important information to help them make better-informed investment decisions.[87]

Finally, the 2010 amendments require money market funds to undergo stress tests under the direction of the board of directors on a periodic basis.[88] Under this stress testing requirement,

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84 The requirements are that, for all taxable money market funds, at least 10% of assets must be in cash, U.S. Treasury securities, or securities that convert into cash (*e.g.*, mature) within one day and, for all money market funds, at least 30% of assets must be in cash, U.S. Treasury securities, certain other Government securities with remaining maturities of 60 days or less, or securities that convert into cash within one week. *See* current rule 2a-7(c)(5)(ii) and (iii).

85 The 2010 amendments also introduced a weighted average life requirement of 120 days, which limits the money market fund's ability to invest in longer-term floating rate securities. *See* current rule 2a-7(c)(2)(ii) and (iii).

86 *See* current rule 30b1-7.

87 *See* current rule 2a-7(c)(12).

88 *See* current rule 2a-7(c)(10)(v).

each fund must periodically test its ability to maintain a stable NAV per share based upon certain hypothetical events, including an increase in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, 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. This reform was intended to provide money market fund boards and the Commission a better understanding of the risks to which the fund is exposed and give fund managers a tool to better manage those risks.[89]

2. *The Eurozone Debt Crisis and U.S. Debt Ceiling Impasses of 2011 and 2013*

Several significant market events since our 2010 reforms have permitted us to evaluate the efficacy of those reforms. Specifically, in the summer of 2011, the Eurozone sovereign debt crisis and an impasse over the U.S. Government's debt ceiling unfolded, and during the fall of 2013 another U.S. Government debt ceiling impasse occurred.

While it is difficult to isolate the effects of the 2010 amendments, these events highlight the potential increased resilience of money market funds after the reforms were adopted. Most significantly, no money market fund needed to re-price below its stable $1.00 share price. As discussed in greater detail in the Proposing Release, as a result of concerns about exposure to European financial institutions, in the summer of 2011, prime money market funds began experiencing substantial redemptions.[90] But unlike September 2008, money market funds did not

89 *See* 2009 Proposing Release, *supra* note 66, at section II.C.3.

90 *See* Proposing Release *supra* note 25, at section II.D.2; DERA Study, *supra* note 24, at 32. Assets held by prime money market funds declined by approximately $100 billion (or 6%) during a three-week period beginning June 14, 2011. Some prime money market funds had redemptions of almost 20% of their assets in each of June, July, and August 2011, and one fund had redemptions of 23% of its assets during that period after articles began to appear in the financial press that warned of *indirect* exposure of money market funds to Greece. Investors purchased shares of government money market funds in late June and

experience meaningful capital losses in the summer of 2011 (or as discussed below, in the fall of 2013), and the funds' shadow prices did not deviate significantly from the funds' stable share prices. Also unlike in 2008, money market funds had sufficient liquidity to satisfy investors' redemption requests, which were submitted at a lower rate and over a longer period than in 2008, suggesting that the 2010 amendments acted as intended to enhance the resiliency of money market funds.[91]

In 2013, another debt ceiling impasse took place,[92] although over a longer time period and without the Eurozone crisis as a backdrop. During the worst two-week period of the 2013 crisis, October 3rd through October 16th, government and treasury money market funds experienced combined outflows of $54.4 billion, which was 6.1% of total assets, with approximately 1.5% of assets flowing out of these funds on October 11th, the single worst day for outflows of the 2013 impasse. Importantly, despite these outflows, fund shadow prices were largely unaffected during this time period. Once the impasse was resolved, assets flowed back into these funds, returning government and treasury money market funds to a pre-crisis asset level before the end of the year, indicating their resiliency.[93]

Although money market funds' experiences differed in 2008 and in the Eurozone crisis,

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early July in response to these concerns, but then began redeeming government money market fund shares in late July and early August, likely as a result of concerns about the U.S. debt ceiling impasse and possible ratings downgrades of government securities. *See* Proposing Release *supra* note 25, at section II.D.2.

91 DERA Study, *supra* note 24, at 33-34. We note that the redemptions in the summer of 2011 also did not take place against the backdrop of a broader financial crisis, and therefore may have reflected more targeted concerns by investors (concern about exposure to the Eurozone and U.S. government securities as the debt ceiling impasse unfolded). Money market funds' experience in 2008, in contrast, may have reflected a broader range of concerns as reflected in the DERA Study, which discusses a number of possible explanations for redemptions during the financial crisis. *Id.* at 7-13.

92 *See, e.g.,* MONEY-MARKET FUNDS SHINE DURING DEBT LIMIT CRISIS (10/25/2013), *available at* http://www.imoneynet.com/news/280.aspx.

93 These statistics are based on an analysis of information from Crane Data. *See also infra* section III.C.1.

the heavy redemptions money market funds experienced in both periods appear to have negatively affected the markets for short-term financing in similar ways. Academics researching these issues have found, as detailed in the DERA Study, that "creditworthy issuers may encounter financing difficulties because of risk taking by the funds from which they raise financing"; "local branches of foreign banks reduced lending to U.S. entities in 2011"; and that "European banks that were more reliant on money funds experienced bigger declines in dollar lending."[94] Thus, while such redemptions often exemplify rational risk management by money market fund investors, they can also have certain contagion effects on the short-term financing markets. Again, despite these similar effects, the 2010 reforms demonstrated that money market funds are potentially more resilient today than in 2008.

3. *Continuing Consideration of the Need for Additional Reforms*

As discussed in greater detail in the Proposing Release, when we adopted the 2010 amendments, we acknowledged that money market funds' experience during the financial crisis raised questions of whether more fundamental changes to money market funds might be warranted.[95] The DERA Study, discussed throughout this Release, has informed our

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94 DERA Study, *supra* note 24, at 34-35 ("It is important to note, however, investor redemptions has a direct effect on short-term funding liquidity in the U.S. commercial paper market. Chernenko and Sunderam (2012) report that 'creditworthy issuers may encounter financing difficulties because of risk taking by the funds from which they raise financing.' Similarly, Correa, Sapriza, and Zlate (2012) finds U.S. branches of foreign banks reduced lending to U.S. entities in 2011, while Ivashina, Scharfstein, and Stein (2012) document European banks that were more reliant on money funds experienced bigger declines in dollar lending.") (internal citations omitted); Sergey Chernenko & Adi Sunderam, *Frictions in Shadow Banking: Evidence from the Lending Behavior of Money Market Funds*, Fisher College of Business Working Paper No. 2012-4 (Sept. 2012); Ricardo Correa, et al., *Liquidity Shocks, Dollar Funding Costs, and the Bank Lending Channel During the European Sovereign Crisis*, Federal Reserve Board International Finance Discussion Paper No. 2012-1059 (Nov. 2012); Victoria Ivashina et al., *Dollar Funding and the Lending Behavior of Global Banks*, National Bureau of Economic Research Working Paper No. 18528 (Nov. 2012).

95 *See* 2009 Proposing Release, *supra* note 66, at section III; 2010 Adopting Release, *supra* note 17, at section I.

consideration of the risks that may be posed by money market funds and our formulation of today's final rules and rule amendments. The DERA Study contains, among other things, a detailed analysis of our 2010 amendments to rule 2a-7 and some of the amendments' effects to date, including changes in some of the characteristics of money market funds, the likelihood that a fund with the maximum permitted weighted average maturity ("WAM") would "break the buck" before and after the 2010 reforms, money market funds' experience during the 2011 Eurozone sovereign debt crisis and the 2011 U.S. debt-ceiling impasse, and how money market funds would have performed during September 2008 had the 2010 reforms been in place at that time.[96]

In particular, the DERA Study found that under certain assumptions the expected probability of a money market fund breaking the buck was lower with the additional liquidity required by the 2010 reforms.[97] For example, funds in 2011 had sufficient liquidity to withstand investors' redemptions during the summer of 2011.[98] The fact that no fund experienced a credit event during that time also contributed to the evidence that funds were able to withstand relatively heavy redemptions while maintaining a stable $1.00 share price. Finally, using actual portfolio holdings from September 2008, the DERA Study analyzed how funds would have performed during the financial crisis had the 2010 reforms been in place at that time. While funds holding 30% weekly liquid assets are more resilient to portfolio losses, funds will "break the buck" with near certainty if capital losses of the fund's non-weekly liquid assets exceed

96 *See generally* DERA Study, *supra* note 24, at section 4.

97 *Id.* at 30.

98 *Id.* at 34.

1%.[99] The DERA Study concludes that the 2010 reforms would have been unlikely to prevent a fund from breaking the buck when faced with large credit losses like the ones experienced in 2008.[100] Based on the DERA Study, we believe that, although the 2010 reforms were an important step in making money market funds better able to withstand heavy redemptions when there are no portfolio losses (as was the case in the summer of 2011 and the fall of 2013), these reforms do not sufficiently address the potential future situations when credit losses may cause a fund's portfolio to lose value or when the short-term financing markets more generally come under stress.

After consideration of this data, as well as the comments we received on the proposal, we believe that the reforms we are adopting today should further help lessen money market funds' susceptibility to heavy redemptions, improve their ability to manage and mitigate potential contagion from high levels of redemptions, and increase the transparency of their risks, while preserving, as much as possible, the benefits of money market funds.

III. DISCUSSION

A. Liquidity Fees and Redemption Gates

Today, we are adopting amendments to rule 2a-7 that will authorize new tools for money market funds to use in times of stress to stem heavy redemptions and avoid the type of contagion that occurred during the financial crisis. These amendments provide money market funds with the ability to impose liquidity fees and redemption gates (generally referred to herein as "fees

99 *Id.* at 38, Table 5. In fact, even at capital losses of only 0.75% of the fund's non-weekly liquid assets and no investor redemptions, funds are already more likely than not (64.6%) to "break the buck." *Id.*

100 To further illustrate the point, the DERA Study noted that the Reserve Primary Fund "would have broken the buck even in the presence of the 2010 liquidity requirements." *Id.* at 37.

and gates") in certain circumstances.[101] Today's amendments will allow a money market fund to impose a liquidity fee of up to 2%, or temporarily suspend redemptions (also known as "gate") for up to 10 business days in a 90-day period, if the fund's weekly liquid assets fall below 30% of its total assets and the fund's board of directors (including a majority of its independent directors) determines that imposing a fee or gate is in the fund's best interests.[102] Additionally, under today's amendments, a money market fund will be required to impose a liquidity fee of 1% on all redemptions if its weekly liquid assets fall below 10% of its total assets, unless the board of directors of the fund (including a majority of its independent directors) determines that imposing such a fee would not be in the best interests of the fund.[103]

These amendments differ in some respects from the fees and gates that we proposed, which would have required funds to impose a 2% liquidity fee on all redemptions, and would have permitted the imposition of redemption gates for up to 30 days in a 90-day period, after a fund's weekly liquid assets fell below 15% of its total assets. In addition, under our proposal, a fund's board (including a majority of independent directors) could have determined not to impose the liquidity fee or to impose a lower fee. A large number of commenters supported, to varying degrees and with varying caveats, our fees and gates proposal.[104] Many other

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101 Under the amendments we are adopting today, government funds are permitted, but not required, to impose fees and gates, as discussed below. *See infra* section III.C.1 of this Release.

102 If, at the end of a business day, a fund has invested 30% or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee or imposing the redemption gate, effective as of the beginning of the next business day. *See* rule 2a-7(c)(2)(i)(A) and (B), and (ii)(B).

103 The board also may determine that a lower or higher fee would be in the best interests of the fund. *See* rule 2a-7(c)(2)(ii)(A); *see also infra* section III.A.2.c.

104 *See, e.g.,* Form Letter Type A; Comment Letter of Fidelity Investments (Sept. 16, 2013) ("Fidelity Comment Letter"); Comment Letter of Federated Investors, Inc. (Re: Alternative 2) (Sept. 16, 2013) ("Federated V Comment Letter"); Comment Letter of Northern Trust Corporation (Sept. 16, 2013) ("Northern Trust Comment Letter").

commenters, on the other hand, expressed their opposition to fees and gates.[105] Comments on the proposal are discussed in more detail below.

1. Analysis of Certain Effects of Fees and Gates[106]

a. Background

As discussed previously, shareholders redeem money market fund shares for a number of reasons.[107] Shareholders may redeem shares because the current rounding convention in money market fund valuation and pricing can create incentives for shareholders to redeem shares ahead of other investors when the market-based NAV per share of a fund is lower than $1.00 per share.[108] Shareholders also may flee to quality, liquidity, or transparency (or combinations thereof) during adverse economic events or financial market conditions.[109] Furthermore, in times of stress, shareholders may simply need or want to withdraw funds for unrelated reasons. In any case, money market funds may have to absorb quickly high levels of redemptions that exceed internal sources of liquidity. In these instances, funds will need to sell portfolio securities, perhaps at a loss either because they incur transitory liquidity costs or they must sell assets at "fire sale" prices.[110] If fund managers deplete their funds' most liquid assets first, this may impose future liquidity costs (that are not reflected in a $1.00 share price based on current

105 *See, e.g.,* Comment Letter of Capital Advisors Group (Sept. 3, 2013) ("Capital Advisors Comment Letter"); Comment Letter of Americans for Financial Reform (Sept. 17, 2013) ("Americans for Fin. Reform Comment Letter"); Comment Letter of Edward D. Jones and Co., L.P. (Sept. 20, 2013) ("Edward Jones Comment Letter").

106 *See infra* section III.K (discussing further the economic effects of the fees and gates amendments).

107 *See* Proposing Release, *supra* note 25, at 156-172; DERA Study, *supra* note 24, at 2-4.

108 As discussed in section III.B, the floating NAV amendments help mitigate this incentive for institutional prime funds by causing redeeming shareholders to receive the market value of redeemed shares.

109 *See* Proposing Release, *supra* note 25, at n.340.

110 *See* Proposing Release, *supra* note 25, at n.341.

amortized cost valuation) on the non-redeeming shareholders because later redemption requests must be met by selling less liquid assets. These effects may be heightened if many funds sell assets at the same time, lowering asset prices. During the financial crisis, for example, securities sales to meet heavy redemptions in money market funds and sales of assets by other investors created downward price pressure in the market.[111]

Liquidity fees and redemption gates have been used successfully in the past by certain non-money market fund cash management pools to stem redemptions during times of stress.[112] Liquidity fees provide investors continued access to their liquidity (albeit at a cost) while also reducing the incentives for shareholders to redeem shares. Liquidity fees, however, will not outright stop redemptions. In contrast to fees, redemption gates stop redemptions altogether, but do not offer the flexibility of fees.[113] Because redemption gates prevent investors from accessing

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111 *See supra* section II.D herein (discussing the financial crisis); *see also* Proposing Release, *supra* note 25 at 32-33; DERA Memorandum Regarding Liquidity Cost During Crisis Periods, dated March 17, 2014 ("DERA Liquidity Fee Memo"), *available at* http://www.sec.gov/comments/s7-03-13/s70313-321.pdf.

112 A Florida local government investment pool experienced heavy redemptions in 2007 due to its holdings in SIV securities. The pool suspended redemptions and ultimately reopened but only after the pool (and each shareholder's interest) had been split into two separate pools: one holding the more illiquid securities previously held by the pool ("Fund B") and one holding the remaining securities of the pool ("Fund A"). Fund A reopened, but limited redemptions to up to 15% of an investor's holdings or $2 million without penalty, and imposed a 2% redemption fee on any additional redemptions. Fund B remained closed. When Fund A reopened, it experienced withdrawals, but according to state officials, the withdrawals were manageable. *See* Dealbook, NY TIMES, Florida Fund Reopens, and $1.1 Billion is Withdrawn; David Evans and Darrell Preston, *Florida Investment Chief Quits; Fund Rescue Approved*, BLOOMBERG (Dec. 4, 2007); Helen Huntley, *State Wants Fund Audit*, TAMPA BAY TIMES (Dec. 11, 2007); *see also infra* note 114 (discussing the successful use by some European enhanced cash funds of fees or gates during the financial crisis).

113 *See* Institutional Money Market Funds Association, *IMMFA Recommendations for Redemption Gates and Liquidity Fees*, *available at* http://www.immfa.org/publications/policy-positions.html ("Redemption gates and/or a liquidity fee are methods by which a fund manager, if experiencing difficulty due to extreme market circumstances, can control redemptions in order to ensure that all investors are treated fairly and that no 'first-mover' advantage exists."); *cf.* G.W. Schwert & P. J. Seguin, *Securities Transaction Taxes: An Overview of Costs, Benefits and Unresolved Questions*, 49 FINANCIAL ANALYSTS JOURNAL 27 (1993); K.A. Froot & J. Campbell, *International Experiences with Securities Transaction Taxes*, in THE INTERNATIONALIZATION OF EQUITY MARKETS (J. Frankel, ed., 1994), at 277–308.

their investments for a period of time, a fund may choose to first impose a liquidity fee and then, if needed, impose a redemption gate.

The fees and gates amendments we are adopting today are designed to address certain issues highlighted by the financial crisis. In particular, the amendments should allow funds to moderate redemption requests by allocating liquidity costs to those shareholders who impose such costs on funds through their redemptions and, in certain cases, stop heavy redemptions in times of market stress by providing fund boards with additional tools to manage heavy redemptions and improve risk transparency. We understand that based on the level of redemption activity that occurred during the financial crisis, many money market funds would have faced liquidity pressures sufficient to cross the liquidity thresholds we are adopting today that would allow the use of fees and gates. Although no one can predict with certainty what would have happened if money market funds had operated with fees and gates during the financial crisis, we believe that money market funds would have been better able to manage the heavy redemptions that occurred and limit contagion, regardless of the reason for the redemptions.[114]

Fees and gates are just one aspect of the overall package of reforms we are adopting

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114 *See, e.g.,* Comment Letter of Mutual Fund Directors Forum (Sept. 16, 2013) ("MFDF Comment Letter") (stating, with respect to the proposed fee and gates amendments, "we concur that this approach has the potential to reduce runs during times of stress or crisis"); UBS Comment Letter ("We agree that liquidity fees and gates would help money funds address heavy redemptions in an effective manner and limit the spread of contagion …."); Form Letter Type D. We also note that some European enhanced cash funds successfully used fees or gates during the financial crisis to stem redemptions. *See* Elias Bengtsson, *Shadow Banking and Financial Stability: European Money Market Funds in the Global Financial Crisis* (2011) ("Bengtsson"), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1772746&download=yes; Julie Ansidei, et al., *Money Market Funds in Europe and Financial Stability*, European Systemic Risk Board Occasional Paper No. 1, at 36 (June 2012), *available at* http://www.esrb.europa.eu/pub/pdf/occasional/20120622_occasional_paper_1.pdf?465916d48165800065dfafb92059615b6.

today. We recognize that fees and gates do not address all of the factors that may lead to heavy redemptions in money market funds. For example, fees and gates do not fully eliminate the incentive to redeem ahead of other investors in times of stress[115] or fully prevent investors from redeeming shares (except during the duration of a temporary gate) to invest in securities with higher quality, better liquidity, or increased transparency.[116] Fees and gates also do not address the shareholder dilution that results when a shareholder is able to redeem at a stable NAV that is higher than the market value of the fund's underlying portfolio securities.[117] Nonetheless, for the reasons discussed in this Release, fees and gates provide funds and their boards with additional tools to stem heavy redemptions and avoid the type of contagion that occurred during the financial crisis by allocating liquidity costs to those shareholders who impose such costs on funds and by stopping runs.

i. Liquidity Fees

During the financial crisis, some funds experienced heavy redemptions. Shareholders who redeemed shares early bore none of the economic consequences of their redemptions. Shareholders who remained in the funds, however, faced a declining NAV and an increased probability that their funds would "break the buck." As discussed in the Proposing Release and suggested by commenters, investors may have re-assessed their redemption decisions during the

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115 However, as discussed in section III.B herein, under today's amendments, institutional prime funds will be required to float their NAV. This reform is designed, in part, to address the incentive to redeem ahead of other investors in certain money market funds because of current money market fund valuation and pricing methods.

116 Fees and gates lessen but do not fully eliminate the incentive for investors to redeem quickly in times of stress because redeeming shareholders will retain an economic advantage over shareholders who remain in a fund when liquidity costs are high, but before the fund has imposed fees or gates.

117 In contrast, the floating NAV requirement for institutional prime funds will address this issue. *See infra* section III.B.1.

crisis if money market funds had imposed liquidity fees because they would have been required to pay at least some of the costs of their redemptions.[118] It is possible that some investors would have made the economic decision not to redeem because the liquidity fees imposed by the fund and incurred by an investor would have been certain, whereas potential future losses would have been uncertain.[119]

In addition, liquidity fees would have helped offset the costs of the liquidity provided to redeeming shareholders and potentially protected the funds' NAVs because the cash raised from liquidity fees would create new liquidity for the funds.[120] Additionally, to the extent that liquidity fees imposed during the crisis could have reduced redemption requests at the margin, they would have allowed funds to generate liquidity internally as assets matured. By imposing liquidity costs on redeeming shareholders, liquidity fees, as noted by commenters, also treat holding and redeeming shareholders more equitably.[121]

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118 *See, e.g.*, Comment Letter of U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Sept. 17, 2013) ("Chamber II Comment Letter") ("[I]f shareholders were to be charged a fee when a MMF's liquidity costs are at a premium, they may be discouraged from redeeming their shares at that time, which would have the effect of slowing redemptions in the MMF."); Comment Letter of Charles Schwab Investment Management, Inc. (Sept. 12, 2013) ("Schwab Comment Letter") ("[W]e agree that the proposed liquidity fee of 2% would be a strong disincentive to redeem during a crisis ....").

119 *See* HSBC Comment Letter; *see also infra* note 152-153 and accompanying text. We acknowledge (as we did in the Proposing Release) that liquidity fees may not always effectively stave off high levels of redemptions in a crisis; however, liquidity fees, once imposed, should help reduce the incentive to redeem shares because investors will pay a fee in connection with their redemptions. *See* Proposing Release, *supra* note 25, at 161.

120 Fees paid by investors that redeem shares should help prevent a fund's NAV from becoming impaired based on liquidity costs, as long as the liquidity fee imposed reflects the liquidity cost of redeeming shares. Fees should also generate additional liquidity to help funds meet redemption requests.

121 *See, e.g.*, Invesco Comment Letter ("Liquidity fees would provide an appropriate and effective means to ensure that the extra costs associated with raising liquidity to meet fund redemptions during times of market stress are borne by those responsible for them."); Comment Letter of J.P. Morgan Asset Management (Sept. 17, 2013) ("J.P. Morgan Comment Letter"); UBS Comment Letter; *but see, e.g.*, Comment Letter of U.S. Bancorp Asset Management, Inc. (Sept. 16, 2013) ("U.S. Bancorp Comment Letter") (suggesting that liquidity fees harm those that redeem after the fees are imposed and that gates harm those that remain in the fund after the gate is in place).

Liquidity fees, which we believe would rarely be imposed under normal market conditions, are designed to preserve the current benefits of principal stability, liquidity, and a market yield, but reduce the likelihood that, in times of market stress, costs that ought to be attributed to a redeeming shareholder are externalized on remaining shareholders and on the wider market.[122] Even if a liquidity fee is imposed, fund investors continue to have the flexibility to access liquidity (albeit at a cost). The Commission believes, and commenters suggested, that if funds could have imposed liquidity fees during the crisis, they would likely have been better able to manage redemptions, thereby ameliorating their impact and reducing contagion effects.[123]

ii. Redemption Gates

We believe that funds also could have benefitted from the ability to impose redemption gates during the crisis.[124] Like liquidity fees, gates are designed to preserve the current benefits

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122 *See* Proposing Release, *supra* note 25, at n.343.

123 *See* Proposing Release, *supra* note 25, at 155; *see also, e.g.,* Comment Letter of Wells Fargo Funds Management, LLC (Sept. 16, 2013) ("Wells Fargo Comment Letter") ("Prime money market fund investors, the short-term markets and businesses that rely on funds for financing would each benefit from the ability of [f]ees and [g]ates, during distressed market conditions, to reduce the susceptibility of subject funds to runs and blunt the spread of deleterious contagion effects."); *but see, e.g.,* U.S. Bancorp Comment Letter (suggesting that liquidity fees would not deter redemptions in times of market stress or prevent contagion because "investors will choose to pay the [fee] now rather than wait for the wind-down of a fund to be completed.").

124 *See* Comment Letter of Arnold & Porter LLP on behalf of Federated Investors [Overview] (Sept. 11, 2013) ("Federated II Comment Letter") (noting that gates have "been demonstrated to address runs in a crisis ...."); Comment Letter of BlackRock, Inc. (Sept 12, 2013) ("BlackRock II Comment Letter") ("Standby liquidity fees and gates would "stop the run" in crisis scenarios."); *see also supra* note 114 (noting that European enhanced cash funds successfully used fees or gates during the financial crisis to stem redemptions); *The Need to Focus a Light on Shadow Banking is Nigh*, Mark Carney, Financial Times (June 15, 2014), *available at* http://www.ft.com/intl/cms/s/0/3a1c5cbc-f088-11e3-8f3d-00144feabdc0.html?siteedition=intl#axzz35rCMZLTy ("Money market funds are being made less susceptible to runs...by establishing an ability for funds to use, for example, temporary suspensions of withdrawals...."); *The Age of Asset Management?*, Andrew Haldane (Apr. 4, 2014), *available at* http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech723.pdf (suggesting gates may be a "suitable" tool to "tackle market failures"); *but see, e.g.,* Comment Letter of Deutsche Investment Management Americas (Sept. 17, 2013) ("Deutsche Comment Letter") (suggesting that gates can exacerbate a run).

of money market funds under most market conditions; however, if approved and monitored by their boards, funds can use gates to respond to a run by directly halting redemptions. If funds had been able to impose redemption gates during the crisis, they would have had available to them a tool to stop temporarily mounting redemptions,[125] which if used could have generated additional internal liquidity while gates were in place.[126] In addition, gates may have allowed funds to invest the proceeds of maturing assets in short-term securities for the duration of the gate, protecting the short-term financing market, and supporting capital formation for issuers. Gates also would have allowed funds to directly and fully control redemptions during the crisis, providing time for funds to better communicate the nature of any stresses to shareholders and thereby possibly mitigating incentives to redeem shares.[127]

b. Benefits of Fees and Gates

i. Fees and Gates Address Concerns Related to Heavy Redemptions

As noted above, a large number of commenters supported our fees and gates proposal.[128] The primary benefit cited by commenters in favor of fees and/or gates is that they would address

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125 *See, e.g.,* U.S. Bancorp Comment Letter (suggesting that redemption gates would be the "most effective option in addressing run risk"); Chamber II Comment Letter (stating that "a redemption gate would stop a 'run' in [its] tracks").

126 *See, e.g.,* Chamber II Comment Letter ("[A] redemption gate also gives [a money market fund] time for issues in the market to subside and for securities in the portfolio to mature, which would increase the [money market fund's] liquidity levels."); Form Letter Type D (suggesting that redemption gates "would give funds time to stabilize"). Internal liquidity generated while a gate is in place could prevent funds from having to immediately sell assets at fire sale prices.

127 *See, e.g.,* Invesco Comment Letter ("Redemption gates have been proven to be an effective means of preventing runs and providing a 'cooling off' period to mitigate the effects of short-term investor panic.")

128 We note that many participants in the money market fund industry have previously expressed support for imposing some form of a liquidity fee or redemption gate when a fund comes under stress as a way of reducing, in a targeted fashion, the fund's susceptibility to heavy redemptions. *See* Proposing Release, *supra* note 25, at n.358.

run risk and/or systemic contagion risk.[129] Commenters also argued that fees and gates would protect the interests of all fund shareholders, particularly non- or late-redeeming shareholders, treating them more equitably.[130] Commenters supported our view that redemption restrictions could provide a "cooling off" period to temper the effects of short-term investor panic,[131] and that fees or gates could preserve and help restore the liquidity levels of a money market fund that has come under stress.[132] Commenters also echoed our view that fees and/or gates could reduce or eliminate the likelihood that funds would be forced to sell otherwise desirable assets and engage in "fire sales."[133] Additionally, commenters noted that gates would provide boards and advisers

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129 *See, e.g.,* Form Letter Type A; U.S. Bancorp Comment Letter; Comment Letter of Davenport & Company LLC (Sept. 13, 2013) ("Davenport Comment Letter"); MFDF Comment Letter; Comment Letter of Treasury Strategies, Inc. (Mar. 31, 2014) ("Treasury Strategies III Comment Letter") ("We found that [f]ees and [g]ates can stop and prevent runs.... We find that highly effective run prevention is attainable within the approaches contemplated by the [Proposing] Release, while requiring that fund boards be given discretion to take protective action. This is the mechanism by which [f]ees/[g]ates cause [money market funds] to internalize the cost of investor protection, while preserving the utility of current CNAV vehicles."); *see also The Need to Focus a Light on Shadow Banking is Nigh*, Mark Carney, Financial Times (June 15, 2014), *available at* http://www.ft.com/intl/cms/s/0/3a1c5cbc-f088-11e3-8f3d-00144feabdc0.html?siteedition=intl#axzz35rCMZLTy ("By establishing common policy standards and arrangements for co-operation, the reforms [including temporary gates] will help to avoid a fragmentation of the global financial system."); *but see, e.g.,* Boston Federal Reserve Comment Letter (suggesting fees or gates do not address run risk); Systemic Risk Council Comment Letter; Comment Letter of American Bankers Association (Sept. 17, 2013) ("American Bankers Ass'n Comment Letter").

130 *See, e.g.,* Form Letter Type D (noting that gates would "give funds time to stabilize or, in the event a fund cannot resume redemptions without breaking the buck, ensure that the funds [sic] shareholders are treated equally in a distribution of the funds [sic] assets upon dissolution"); Invesco Comment Letter ("Liquidity fees would provide an appropriate and effective means to ensure that the extra costs associated with raising liquidity to meet fund redemptions during times of market stress are borne by those responsible for them."); Comment Letter of Independent Directors Council (Sept. 17, 2013) ("IDC Comment Letter"); J.P. Morgan Comment Letter. We recognize, however, that our fees and gates reform does not address other shareholder equity concerns, including shareholder dilution, that arise as a result of the structural features in current rule 2a-7 that promote a first-mover advantage. Our floating NAV reform is designed to address this concern for institutional prime money market funds. *See infra* section III.B.

131 *See, e.g.,* Form Letter Type D; Invesco Comment Letter; Comment Letter of Reich & Tang Asset Management, LLC (Sept. 17, 2013) ("Reich & Tang Comment Letter").

132 *See, e.g.,* HSBC Comment Letter; Deutsche Comment Letter; ICI Comment Letter.

133 *See, e.g.,* MSCI Comment Letter; Federated V Comment Letter; Comment Letter of Treasury Strategies, Inc. (Sept. 12, 2013) ("Treasury Strategies Comment Letter"). We also believe that reducing or eliminating the likelihood of fire sales would in turn help protect other market participants that need to sell assets in the

with crucial additional time to find the best solution in a crisis, instead of being forced to make decisions in haste.[134]

We are adopting reforms that will give a fund the ability to impose either a liquidity fee or a redemption gate because we believe, and some commenters suggested, that fees and gates, while both aimed at helping funds to better and more systematically manage high levels of redemptions, do so in different ways and thus with somewhat different tradeoffs.[135] Accordingly, we believe that both fees and gates should be available to funds and their boards to provide maximum flexibility for funds to manage heavy redemptions.[136] Liquidity fees are designed to reduce shareholders' incentives to redeem shares when it is abnormally costly for funds to provide liquidity by requiring redeeming shareholders to bear at least some of the liquidity costs associated with their redemption (rather than transferring all of those costs to remaining shareholders).[137] Liquidity fees increase the cost of redeeming shares, which may

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market or perhaps mark asset values to market.

134 *See, e.g.,* ICI Comment Letter; UBS Comment Letter; IDC Comment Letter; Federated V Comment Letter.

135 *See, e.g.,* Invesco Comment Letter (suggesting that gates provide "the most direct, simple and effective method" to prevent runs and contagion as well as "a 'cooling off' period to mitigate the effects of short-term investor panic," while fees "mitigate the 'first-mover advantage'" and "provide an appropriate and effective means to ensure that the extra costs associated with raising liquidity to meet fund redemptions during times of market stress are borne by those responsible for them.")

136 *See* Treasury Strategies III Comment Letter ("Fees enable investors to access their liquidity, but at a price…, but that is the cost of being able to assure that a stable NAV product will not cause contagion or fire sales during such periods. Gates do not impose an extra [f]ee on shareholders, which is appealing to many shareholders, but have the undesirable effect of restricting access to liquidity during critical periods. Together, [f]ees and [g]ates provide fund boards with powerful tools to prevent a run from materializing, to stop a run in progress, and to assure that a stress event does not cause contagion or fire sales.").

137 *See, e.g.*, Dreyfus Comment Letter ("We also agree that liquidity fees can deter net redemption activity while also providing an appropriate "cost of liquidity" for investors choosing to exercise the option to redeem over the option to hold….); *see also* Comment Letter of Wells Fargo Funds Management, LLC (Jan. 17, 2013) (available in File No. FSOC–2012–0003) ("Wells Fargo FSOC Comment Letter") (stating that a liquidity fee would "provide an affirmative reason for investors to avoid redeeming from a distressed fund" and "those who choose to redeem in spite of the liquidity fee will help to support the fund's market-based NAV and thus reduce or eliminate the potential harm associated with the timing of their redemptions

reduce investors' incentives to sell them. Likewise, fees help reduce investors' incentives to redeem shares ahead of other investors, especially if fund managers deplete their funds' most liquid assets first to meet redemptions, leaving later redemption requests to be met by selling less liquid assets.

Several commenters noted that liquidity fees could "re-mutualize" risk-taking among investors and provide a way to recover costs of liquidity in times of stress.[138] This is because liquidity fees allocate at least some of the costs of providing liquidity to redeeming rather than non-redeeming shareholders and protect fund liquidity by requiring redeeming shareholders to repay funds for liquidity costs incurred.[139] To the extent liquidity fees exceed such costs, they also can help increase the fund's net asset value for remaining shareholders which would have a restorative effect if the fund has suffered a loss. As one commenter has said, a liquidity fee can "provide a strong disincentive for investors to make further redemptions by causing them to choose between paying a premium for current liquidity or delaying liquidity and benefitting from the fees paid by redeeming investors."[140] This explicit pricing of liquidity costs in money market funds should offer significant benefits to funds and the broader short-term financing market in times of potential stress because it should lessen both the frequency and effect of shareholder redemptions, which might otherwise result in the sale of fund securities at "fire sale" prices.[141]

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to other remaining investors").

138 *See, e.g.*, HSBC Comment Letter; Invesco Comment Letter; IDC Comment Letter.

139 We note that investors owning securities directly – as opposed to through a money market fund – naturally bear liquidity costs. They bear these costs both because they bear any losses if they have to sell a security at a discount to obtain their needed liquidity and because they directly bear the risk of a less liquid investment portfolio if they sell their most liquid holdings first to obtain needed liquidity.

140 *See* Proposing Release, *supra* note 25, at 160 n.352 (citing ICI Jan. 24 FSOC Comment Letter).

141 *See* Chamber II Comment Letter ("[I]f shareholders were to be charged a fee when an MMF's liquidity

In contrast, redemption gates will provide fund boards with a direct and immediate tool for stopping heavy redemptions in times of stress.[142] Unlike liquidity fees, gates are designed to directly stop a run by delaying redemptions long enough to allow (1) fund managers time to assess the condition of the fund and determine the appropriate strategy to meet redemptions, (2) liquidity buffers to grow organically as securities in the portfolio (many of which are very short-term) mature and produce cash, and (3) shareholders to assess the liquidity and value of portfolio holdings in the fund and for any shareholder or market panic to subside.[143] As contemplated by today's amendments, gates definitively stop runs for funds that impose them by blocking all redemptions for their duration.

We recognize that redemption gates, if they are ever imposed, will inhibit the full, unfettered redeemability of money market fund shares, a principle embodied in section 22(e) of the Investment Company Act.[144] However, as discussed in section III.A.3 below, section 22(e) of the Investment Company Act is aimed at preventing funds and their advisers from interfering with shareholders' redemption rights for improper purposes, such as preservation of management fees. Consistent with that aim, redemption gates under today's amendments are designed to benefit the fund and its shareholders and may be imposed only when a fund's board determines that doing so is in the best interests of the fund.[145] We also note that, in response to commenter concerns regarding investor access to their investments and the proposed duration of redemption

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costs are at a premium, they may be discouraged from redeeming their shares at that time, which would have the effect of slowing redemptions in the MMF.").

142 *See, e.g.,* Chamber II Comment Letter ("[A] redemption gate would stop a 'run' in [its] tracks, because shareholders would be prohibited from redeeming their shares while the gate is in place.")

143 *See* Proposing Release, *supra* note 25, at n.348.

144 *See* section 22(e).

145 *See* rule 2a-7(c)(2)(i).

gates, under today's amendments, gates will be limited to up to 10 business days in any 90-day period (rather than 30 days in a 90-day period as proposed).[146] As such, the extent to which today's amendments inhibit the redeemability of money market fund shares is limited.

In fact, we note that money market funds are currently permitted to delay payments on redemptions for up to seven days.[147] In addition, money market funds currently may suspend redemptions after obtaining an exemptive order from the Commission,[148] or in accordance with rule 22e-3, which requires a fund's board of directors to determine that the fund is about to "break the buck" (specifically, that the extent of deviation between the fund's amortized cost price per share and its current market-based NAV per share may result in material dilution or other unfair results to investors).[149] Under today's amendments, money market fund boards will be able to temporarily suspend redemptions after a fund falls below the same threshold that funds must cross for boards to impose liquidity fees.[150] Accordingly, we believe that the gating allowed by today's amendments extends and formalizes the existing gating framework, clarifying for investors when a money market fund potentially may use a gate as a tool to manage heavy

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146 *See* rule 2a-7(c)(2)(i)(B); *see also, infra* section III.A.2.d (discussing the duration of redemption gates).

147 *See* section 22(e).

148 There are limited exceptions specified in section 22(e) of the Act in which a money market fund (and any other mutual fund) may suspend redemptions or delay payment on redemptions for more than seven days, such as (i) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted, or (ii) during any period in which an emergency exists (as the Commission determines by rule or regulation) as a result of which (A) disposal by the fund of securities owned by it is not reasonably practical or (B) it is not reasonably practical for the fund to determine the value of its net assets. The Commission also has granted orders in the past allowing funds to suspend redemptions. *See, e.g.*, In the Matter of The Reserve Fund, Investment Company Act Release No. 28386 (Sept. 22, 2008) [73 FR 55572 (Sept. 25, 2008)] (order); Reserve Municipal Money-Market Trust, et al., Investment Company Act Release No. 28466 (Oct. 24, 2008) [73 FR 64993 (Oct. 31, 2008)] (order).

149 Rule 22e-3(a)(1). Unlike under today's amendments, a fund that imposes redemptions gates pursuant to rule 22e-3 must do so permanently and in anticipation of liquidation.

150 *See* rule 2a-7(c)(2)(i).

redemptions and thus prevents any investor confusion on when gating may apply.

Fees and gates also may have different levels of effectiveness under different stress scenarios.[151] For example, we expect that the imposition of liquidity fees when a fund faces heavy redemptions should be able to reduce the harm to non-redeeming shareholders and thus the likelihood of additional redemptions that might have been made in response to that harm. To the extent that a fund does not need to engage in fire sales and depress prices because of the imposition of fees, the possibility of broader market contagion is reduced. We also note that research in behavioral economics suggests that liquidity fees may be particularly effective in dampening a run because, when faced with two negative options, investors tend to prefer the option that involves only possible losses rather than the option that involves certain losses, even when the amount of possible loss is significantly higher than the certain loss.[152] Unlike gates, which temporarily prevent shareholders from redeeming shares altogether, once imposed, liquidity fees will present investors with an economic decision as to whether to redeem or remain in a fund. Investors fearing that a money market fund may suffer losses may prefer to stay in the fund and avoid paying a liquidity fee (despite the possibility that the fund might suffer a future loss) rather than redeem and lock in payment of the liquidity fee.[153]

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151 We note that under today's amendments, a fund's board may determine that it is in the best interests of a fund to impose a fee and then later determine to lift the fee and impose a gate, or vice versa, subject to the limitations on the duration of fees and gates. *See* rule 2a-7(c)(2)(i) and (ii).

152 *See, e.g.*, Proposing Release, *supra* note 25, at n.355 (citing DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011), at 278-288); *see also* HSBC Comment Letter; Schwab Comment Letter ("A liquidity fee would force early redeemers to pay for the costs of their redemption, without knowing whether the fund was actually going to experience losses or not. This is a powerful disincentive."); *but see* Comment Letter of Melanie L. Fein Law Offices (Sept. 10, 2013) ("Fein Comment Letter") (suggesting liquidity fees are unlikely to "prevent institutional [money market fund] investors from reallocating their assets in a crisis").

153 *See, e.g.*, Proposing Release, *supra* note 25, at n.355 (citing DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011), at 278-288); *see also* HSBC Comment Letter; Schwab Comment Letter.

It is possible, however, that liquidity fees might not be fully effective during a market-wide crisis because, for example, shareholders might redeem shares irrespective of the level of their fund's true liquidity costs and the imposition of a liquidity fee.[154] In those cases, gates will be able to function as circuit breakers, creating time for funds to rebuild their own internal liquidity and shareholders to reconsider whether redemptions are still desired or warranted.[155]

ii. Management-Related Advantages

We are also mindful that permitting fund boards to impose fees and/or gates after a fund has fallen below a particular threshold, and requiring funds to impose liquidity fees at a lower designated threshold (absent a board finding that the fee is not in the best interests of the fund), may offer certain benefits to funds with respect to management of liquidity and redemption activity. Some commenters suggested that, even during non-stress periods, fees and gates could provide fund managers with an incentive to carefully monitor shareholder concentration and shareholder flow to lessen the chance that the fund might have to impose fees or gates (because larger redemptions are more likely to cause the fund to breach the threshold).[156] The fees and gates amendments also may have the additional effect of encouraging portfolio managers to more closely monitor fund liquidity and hold more liquid securities to increase the level of daily and weekly liquid assets in the fund, as it would tend to lessen the likelihood of a fee or gate being imposed.[157] Such an approach could also lead to greater investor participation in money

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154 *See* DERA Study, *supra* note 24, at 7-14 (discussing different possible explanations for why shareholders may redeem from money market funds in times of stress).

155 *See, e.g.*, Comment Letter of Department of the Treasury, Commonwealth of Virginia (Sept. 17, 2013) ("Va. Treasury Comment Letter"); Chamber II Comment Letter; Dreyfus Comment Letter.

market funds to the extent investors seek to invest in a product with low liquidity risk, thereby increasing the supply of capital available to invest in commercial paper. We recognize, however, that such an approach could perhaps shrink the market for riskier or longer-term commercial paper, or have a negative effect on yield.[158]

We also note that funds may take alternate approaches to managing liquidity and imposing fees and gates, which may differentially affect the short-term funding markets. For example, a fund that imposes a fee or gate may decide to immediately build liquidity by investing all maturing securities in highly liquid assets, particularly if the fund wants to remove the fee or gate as soon as possible. Another fund may plan to impose a fee or gate for a set period of time, in which case, there would be no reason to stop investing in less liquid short-term commercial paper provided it matured while the fee or gate was in place. The first strategy would likely have the capital formation effect of lowering participation in short-term funding markets, whereas the second strategy may defer the impact until a later time, possibly after market conditions have improved.

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156 *See, e.g.,* Comment Letter of Securities Industry and Financial Markets Association (Sept. 17, 2013) ("SIFMA Comment Letter") (stating that some members "believe the existence of the liquidity trigger for the fee and gate will motivate fund managers to maintain fund liquidity well in excess of the trigger level, to avoid triggering the fee or gate. That is to say, the mere existence of the potential for the fee or gate will result in enhanced liquidity in money market funds."); BlackRock II Comment Letter; Comment Letter of Hester Peirce and Robert Greene (Sept. 17, 2013) ("Peirce & Greene Comment Letter"); *see also* HSBC Global Asset Management, *Liquidity Fees; a proposal to reform money market funds* (Nov. 3, 2011) ("HSBC 2011 Liquidity Fees Letter") (a liquidity fee "will result in more effective pricing of risk (in this case, liquidity risk)…[and] act as a market-based mechanism for improving the robustness and fairness" of money market funds); Comment Letter of BlackRock, Inc. (Dec. 13, 2012) (available in File No. FSOC–2012–0003) ("BlackRock FSOC Comment Letter") ("A fund manager will focus on managing both assets and liabilities to avoid triggering a gate. On the liability side, a fund manager will be incented to know the underlying clients and model their behavior to anticipate cash flow needs under various scenarios. In the event a fund manager sees increased redemption behavior or sees reduced liquidity in the markets, the fund manager will be incented to address potential problems as early as possible.").

157 *See, e.g.,* Proposing Release, *supra* note 25, at n.365.

158 *See infra* section III.K.

iii. Transparency

We recognize, and certain commenters noted,[159] that the prospect of fees and gates being implemented when a fund is under stress should help make the risk of investing in money market funds more salient and transparent to investors, which may help sensitize them to the risks of investing in money market funds. On the other hand, we note that other commenters argued that fees and gates would not improve transparency of risk for investors.[160] Having considered these comments, however, we believe that there will be an appreciable increase in transparency as a result of our fees and gates amendments. The disclosure amendments we are adopting today will require funds to provide disclosure to investors regarding the possibility of fees and gates being imposed if a fund's liquidity is impaired. We believe such disclosure will benefit investors by informing them further of the risks associated with money market funds, particularly that money market funds' liquidity may, at times, be impaired.[161] In addition, as noted above, fees and gates also could encourage shareholders to monitor funds' liquidity levels and exert market discipline

159 *See, e.g.,* ICI Comment Letter; Comment Letter of Myra Page (July 19, 2013) ("Page Comment Letter").

160 *See, e.g.,* Comment Letter of Thrivent Financial for Lutherans (Sept. 17, 2013) ("Thrivent Comment Letter) ("The imposition of a liquidity fee or gate will always be a surprise to the investors that do not redeem quickly enough to avoid it. The need to impose such a fee or gate will not be transparent to the investor unless redemption activity is disclosed in a timely manner providing sufficient time for investors to react."); Capital Advisors Comment Letter. Two commenters also expressed concern that the ability to impose fees and gates would perpetuate shareholder reliance on sponsor support. *See* Capital Advisors Comment Letter; Thrivent Comment Letter. As discussed herein, we believe fees and gates and the disclosure associated with fees and gates will provide investors certain benefits, including informing investors further of the risks associated with money market funds. We further believe that the disclosure requirements adopted today regarding sponsor support should help ameliorate concerns regarding shareholder reliance on sponsor support. *See infra* sections III.E.7, III.E.9.g and III.F.3.

161 We recognize that the level of board discretion in the fees and gates amendments may make it more difficult for investors to predict when fees and/or gates will imposed; however, we are adopting certain thresholds and maximums that we believe will provide investors with notice as to the possible imposition of fees and gates. Additionally, today we are adopting a requirement that funds disclose their percentage of weekly liquid assets on a daily basis on their websites and, thus, shareholders should be aware when a fund is approaching these thresholds. *See* rule 2a-7(h)(10)(ii)(B).

over the fund to reduce the likelihood that the imposition of fees or gates will become necessary in that fund.[162]

c. Concerns Regarding Fees and Gates

i. Pre-Emptive Runs and Broader Market Concerns

We acknowledge the possibility that, in market stress scenarios, shareholders might pre-emptively redeem shares if they fear the imminent imposition of fees or gates (either because of the fund's situation or because other money market funds have imposed redemption restrictions).[163] A number of commenters suggested investors would do so.[164] Some commenters also suggested that sophisticated investors in particular might be able to predict that fees and gates may be imposed and may redeem shares before this occurs.[165]

While we recognize that there is risk of pre-emptive redemptions, the benefits of having effective tools in place to address runs and contagion risk leads us to adopt the proposed fees and

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162 *See* Proposing Release, *supra* note 25, at n.366. The disclosure of fees and gates also could advantage larger funds and fund groups if the ability to provide financial support reduces or eliminates the need to impose fees and/or gates (whose imposition may be perceived to be a competitive detriment).

163 *See, e.g.*, Proposing Release, *supra* note 25, at 163-167, n.361.

164 *See, e.g.*, Comment Letter of Novelis (July, 16, 2013) ("Novelis Comment Letter"); Comment Letter of State Investment Commission, Commonwealth of Kentucky (Sept. 9, 2013) ("Ky. Inv. Comm'n Comment Letter"); Boston Federal Reserve Comment Letter; Comment Letter of Hester Peirce and Robert Greene, Working Paper: Opening the Gate to Money Market Fund Reform (Apr. 8, 2014) ("Peirce & Greene II Comment Letter"). Some commenters were concerned that news of one money market fund imposing a redemption restriction could trigger a system-wide run by investors in other money market funds. *See, e.g.*, Samuel Hanson, David Scharfstein, and Adi Sunderam (Sept. 16, 2013) ("Hanson *et al.* Comment Letter"); Deutsche Comment Letter; Boston Federal Reserve Comment Letter (suggesting further that "because of the relative homogeneity in many [money market funds' holdings], the imposition of a liquidity fee or redemption gate on one fund may incite runs on other funds which are not subject to such measures") (citation omitted). In addition, one commenter, drawing an analogy to banks prior to the adoption of federally insured deposits, noted that although withdrawal suspensions were commonly used by banks in response to fleeing depositors, the specter of suspensions themselves were often the cause of such investor flight. *See, e.g.*, Comment Letter of Committee on Capital Markets Regulation (Sept. 17, 2013) ("Comm. Cap. Mkt. Reg. Comment Letter").

165 *See, e.g.*, MFDF Comment Letter; Va. Treasury Comment Letter; Goldman Sachs Comment Letter.

gates reforms, with some modifications. We believe several of the changes we are making in our final reforms will mitigate this risk and dampen the effects on other money market funds and the broader markets if pre-emptive redemptions do occur.

As discussed below, the shorter maximum time period for the imposition of gates and the smaller size of the default liquidity fee that we are adopting in these final amendments, as compared to what we proposed, are expected to lessen further the risk of pre-emptive runs.[166] We understand that the potential for a longer gate or higher liquidity fee before a restriction is in place may increase the incentive for investors to redeem at the first sign of any potential stress at a fund or in the markets.[167] We believe that by limiting the maximum time period that gates may be imposed to 10 business days in any 90-day period (down from the proposed 30 days), investor concerns regarding an extended loss of access to cash from their investment should be mitigated. Indeed, some money market funds today retain the right to delay payment on redemption requests for up to seven days, as all registered investment companies are permitted to do under the Investment Company Act, and we are not aware that this possibility has led to any pre-emptive runs historically.[168] In addition, we note that under section 22(e), the Commission also has the authority to, by order, suspend the right of redemption or allow the postponement of payment of redemption requests for more than seven days. The Commission used this authority, for example, with respect to the Reserve Primary Fund. To our knowledge, this authority also

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166 *See* Comment Letter of Federated Investors, Inc. (Apr. 25, 2014) ("Federated XI Comment Letter").

167 *See* J.P. Morgan Comment Letter ("The potential of total loss of access to liquidity for up to thirty (30) days will be a concern for investors, and could exacerbate a pre-emptive run."); Federated V Comment Letter ("Shareholders will find it increasingly difficult to compensate for their loss of liquidity the longer the suspension of redemptions continues. It is therefore important for Alternative 2 to limit the suspension of redemptions to a period in which the potential benefits to shareholders of delaying redemptions outweigh the potential disruptions caused by the delay.").

168 *See* section 22(e).

has not historically led to pre-emptive redemptions. We believe that the gating allowed by today's amendments extends and formalizes this existing gating framework, clarifying for investors when a money market fund potentially may use a gate as a tool to manage heavy redemptions and thus prevents any investor confusion on when gating may apply.

We believe that the maximum 10 business day gating period we are adopting today is a similarly short enough period of time (as compared to the seven days a fund may delay payment on redemption requests) that many investors may not be unduly burdened by such a temporary loss of liquidity.[169] Thus, these investors may have less incentive to redeem their investments pre-emptively before the imposition of a gate. For similar reasons, the reduction in the default liquidity fee to 1% (down from the proposed 2%), discussed further below, may also lessen shareholders' incentives to redeem pre-emptively as fewer investors may consider it likely that a liquidity fee will result in an unacceptable loss on their investment.[170]

In addition, we expect that the additional discretion we are granting fund boards to impose a fee or gate at any time after a fund's weekly liquid assets have fallen below the 30% required minimum, a much higher level of remaining weekly liquid assets than proposed, should mitigate the risk of pre-emptive redemptions. This board discretion should reduce the incentive

169 *See, e.g.,* Federated V Comment Letter (stating that 10 calendar days "would be a significantly shorter period than proposed by the Commission, while still allowing prime [money market funds] more than a week to address whatever problem led to the suspension of redemptions. This would also be consistent with the comments of some of the investors who indicated to Federated that they probably could not go more than two weeks without access to the cash held in their [money market fund]."); *see also infra* section III.A.2.d (discussing the maximum duration of temporary redemption gates under today's amendments).

170 We note that under our final amendments, the 1% default liquidity may be raised by a fund's board (up to 2%) if it is in the best interests of the fund. *See* rule 2a-7(c)(2)(ii)(A). However, given the empirical information regarding liquidity costs in money market fund eligible securities in the financial crisis, as discussed in the DERA Liquidity Fee Memo, which supported the reduction in the size of the default liquidity fee to 1%, money market fund shareholders may estimate that a fee as high as 2% will be unlikely and that depending on the circumstances, a fee of less than 1% could be appropriately determined by the board of directors. *See* DERA Liquidity Fee Memo, *supra* note 111.

of shareholders from trying to pre-emptively redeem because they will be able to less accurately predict specifically when, and under what circumstances, fees and gates will be imposed.[171] Board discretion also should allow boards to act decisively if they become concerned liquidity may become impaired and to react to expected, as well as actual, declines in liquidity levels, given their funds' investor base and other characteristics.

Likewise, increased board discretion should lessen the likelihood that sophisticated investors can preferentially predict when a fee or gate is going to be imposed because sophisticated investors, like any other investor, will not know what specific circumstances a fund board will deem appropriate for the imposition of fees or gates.[172] We recognize that sophisticated investors may monitor the weekly liquid assets of funds and seek to redeem before a fund drops below the 30% weekly liquid asset threshold. We believe, however, that a sophisticated investor may be dissuaded from redeeming in these circumstances because the fund still has a substantial amount of internal liquidity. In addition, redemptions when the fund still has this much internal liquidity would not lead to fire sales or other such adverse effects.

We also believe that increased board flexibility will reduce the occurrence of pre-emptive redemptions by shareholders who seek to redeem because *another* money market fund has imposed a fee or gate. Increased board flexibility will likely result in different funds imposing

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171 *See* Wells Fargo Comment Letter ("The ability for fund investors to frequently and aggressively 'game' and avoid the potential imposition of Fees or Gates is undermined by the element of uncertainty inherent in a fund board's discretion to impose a Fee or a Gate."); *see also* Proposing Release, *supra* note 25, at n.362. Additionally, we believe that requiring investors in institutional prime funds to redeem their shares at floating NAV should lower the incentive to run pre-emptively when investors anticipate that a gate will be imposed as a result of a credit event. *See infra* section III.B for a discussion of the floating NAV requirement.

172 Although funds' website disclosure will indicate when a fund is approaching the weekly liquid asset thresholds for imposing a fee or gate, investors will not know the circumstances under which a board will deem such a restriction to be in the best interests of the fund. *See* rule 2a-7(h)(10)(ii)(B).

different redemption restrictions at different times, particularly considering that after crossing the 30% threshold each fund's board will be required to make a best interests determination with respect to the imposition of a fee or gate.[173] As such, it will be less likely that investors can predict whether any particular fund will impose a fee or gate, even if another fund has done so, and thus perhaps less likely they will redeem assuming that one fund imposing such a restriction means other funds may soon do so.

Moreover, we believe that funds' ability to impose fees and gates once weekly liquid assets drop below 30% will substantially mitigate the broader effects of pre-emptive runs, should they occur. A money market fund that imposes a fee or gate with substantial remaining internal liquidity is in a better position to bear those redemptions without a broader market impact because it can satisfy those redemption requests through existing or internally generated cash and not through asset sales (other than perhaps sales of government securities that tend to increase in value and liquidity in times of stress). Thus, pre-emptive runs, if they were to occur, under these circumstances are less likely to generate adverse contagion effects on other money market funds or the short-term financing markets.

We note some commenters suggested that concerns about pre-emptive run risks from fees and gates are likely overstated.[174] One commenter noted that the "element of uncertainty inherent

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173 Boards will also be required to make a best interests determination if they determine to change the level of the default liquidity fee or to not impose the default fee. *See* rule 2a-7(c)(2)(ii).

174 *See, e.g.,* SIFMA Comment Letter; Wells Fargo Comment Letter; Dreyfus Comment Letter; *see also* Chamber II Comment Letter (stating that "unlike with the current conditions of [r]ule 22e-3 under the [Investment Company Act], a redemption gate would allow the MMF to remain in operation after the gate is lifted. This, in turn, will provide MMF investors with comfort regarding the ultimate redemption of their investment and make any large-scale redemptions less likely."); Comment Letter of Artie Green (Aug. 29, 2013) ("Green Comment Letter") ("Fund shareholders would be less likely to panic if they know they will have access to their assets when the fund reopens after a short suspension of redemptions.").

in a board's discretion to impose a fee or gate" would diminish any possible gaming by investors.[175] Another commenter further noted that "appropriate portfolio construction and daily transparency" would reduce the likelihood of anticipatory redemptions.[176] For example, as discussed below, our amendments require that each money market fund disclose daily on its website its level of weekly liquid assets. This means that if one money market fund imposes a fee or gate, investors in other money market funds will have the benefit of full transparency on whether the money market fund in which they are invested is similarly experiencing liquidity stress and thus is likely to impose a fee or gate. Pre-emptive redemptions and contagion effects due to a lack of transparency (which may have occurred in the crisis) may therefore be reduced. Some commenters also have previously indicated that a liquidity fee or gate should not accelerate a run, stating that such redemptions would likely trigger the fee or gate and that, once triggered, the fee or gate would then lessen or halt redemptions.[177]

Additionally, we note that while many European money market funds are able to suspend redemptions and/or impose fees on redemptions, we are not aware that their ability to do so has historically led to pre-emptive runs. Most European money market funds are subject to legislation governing Undertakings for Collective Investment in Transferable Securities ("UCITS"), which also covers other collective investments, and which permits them to suspend temporarily redemptions of units.[178] For example, in Ireland, UCITS are permitted to temporarily

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175 *See* Wells Fargo Comment Letter.

176 *See* Dreyfus Comment Letter.

177 *See, e.g.*, Proposing Release, *supra* note 25, at n.364.

178 *See, e.g.*, UCITS IV Directive, Article 84 (permitting a UCITS to, in accordance with applicable national law and its instruments of incorporation, temporarily suspend redemption of its units); Articles L. 214-19 and L. 214-30 of the French Monetary and Financial Code (providing that under exceptional circumstances and if the interests of the UCITS units holders so demand, UCITs may temporarily suspend redemptions);

suspend redemptions "in exceptional cases where circumstances so require and suspension is justified having regard to the interest of the unit-holders."[179] Similarly, many money market funds in Europe are also permitted to impose fees on redemptions.[180]

We also note that a commenter discussed a paper by the staff of the Federal Reserve Bank of New York ("FRBNY") entitled "Gates, Fees, and Preemptive Runs."[181] The FRBNY staff paper constructs a theoretical model of fees or gates used by a financial intermediary and finds "that rather than being part of the solution, redemption fees and gates can be part of the problem."[182] This commenter argued that this paper fails to consider numerous restrictions in bank products similar to fees and gates that do not appear to have triggered pre-emptive runs on banks.[183] In particular, the commenter noted that all banks are required "to retain contractual authority as to most deposits to postpone withdrawals (gating) or impose early redemption fees and to reserve the right to impose restrictions – either gates or fees or both – on redemptions of all bank deposits other than demand deposit accounts…."[184]

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see also Coll. 7.2R United Kingdom Financial Conduct Authority Handbook (allowing the temporary suspension of redemptions "where due to exceptional circumstances it is in the interest of all the unitholders in the authorized fund").

179 *See* Regulation 104(2)(a) of S.I. No. 352 of 2011.

180 *See, e.g.*, HSBC Comment Letter ("We are in the process of rolling out the ability for the Board of Directors to impose trigger based liquidity fees in our [money market funds] where current regulation allows. At this time we are working on implementation in our flagship "Global Liquidity Fund" range domiciled in Dublin.").

181 *See* Federated XI Comment Letter.

182 *See* Gates, Fees and Preemptive Runs, Federal Reserve Bank of New York Staff Report No. 670 (Apr. 2014), *available at* http://www.newyorkfed.org/research/staff_reports/sr670.pdf.

183 *See* Federated XI Comment Letter.

184 *See id.* (citations omitted). The commenter states that, other than with respect to demand deposit accounts, "banks (1) are required … to reserve the right to require seven days' advance notice of a withdrawal from [money market deposit accounts], NOW accounts and other savings accounts; (2) are not required to allow early withdrawal from [certificates of deposit] and other time deposits; and (3) are allowed to impose early withdrawal fees on time deposits if they choose to permit an early withdrawal from a time deposit."

We note that the model of fees or gates in the FRBNY staff paper has a number of features and assumptions different than the reforms we are adopting today. For example, the paper's model assumes the fees or gates are imposed only when liquid assets are fully depleted. In contrast, under our reforms fees or gates may be imposed while the fund still has substantial liquid assets and, as discussed above, we believe investors may be dissuaded from pre-emptively redeeming from funds with substantial internal liquidity because the fund is more likely to be able to readily satisfy redemptions without adversely impacting the fund's pricing.[185] Moreover, under our reforms (unlike the model), a fund board has discretion in the decision of when to impose fees or gates, which as discussed above should reduce the incentive for investors to run, because they will be able to less accurately predict specifically when, and under what circumstances, fees or gates will be imposed.[186] Another significant difference is that our reforms include a floating NAV for institutional prime money market funds, which constitute a sizeable portion of all money market funds, but the model assumes a stable NAV. As discussed below, we believe the floating NAV requirement may encourage those investors who are least able to bear risk of loss to redirect their investments to other investment opportunities (*e.g.*, government money market funds), and this may have the secondary effect of removing from the funds those investors most prone to redeem should a liquidity event occur for which fees or gates could be imposed. Furthermore, the paper also assumes that no investor could foresee the possibility of a shock to a money market fund that reduces the fund's value or liquidity despite the events of 2008 that should have informed investors that fund NAVs can change over time

[185] *See supra* at text following note 172.

[186] *See supra* notes 171-173 and accompanying text.

and that liquidity levels may fluctuate. In addition, under our floating NAV reforms, price levels of institutional prime money market funds likely will fluctuate, and today's reforms will also require additional disclosures that will convey important information to investors about the fund's value which in turn may help prevent run behavior to the extent it is based on uninformed decision-making.

These differences in our reforms as compared to the model in the FRBNY staff paper, along with the additional disclosures that we are adopting today that will convey important information to investors about the fund's value, should in our view significantly mitigate any potential for substantial investor runs before fees and gates are imposed. Accordingly, the FRBNY staff paper's findings regarding the risks of pre-emptive redemptions, because they rely on different facts and assumptions than are being implemented in today's reforms, are not likely to apply to money market funds following today's reforms.

As noted above, the new daily transparency to shareholders on funds' levels of weekly liquid assets should provide additional benefits, including helping shareholders to understand if their fund's liquidity is at risk and thus a fee or gate more likely and, therefore, should lessen the chance of contagion from shareholders redeeming indiscriminately in response to another fund imposing a fee or gate. Investors will be able to benefit from this disclosure when assessing each fund's circumstances, rather than having to infer information from, or react to, the problems observed at other funds. Nevertheless, investors might mimic other investors' redemption strategies even when those other investors' decisions are not necessarily based on superior information.[187] General stress in the short-term markets or fear of stress at a particular fund could

[187] *See* Proposing Release, *supra* note 25, at n.363; *see also* Hanson *et al.* Comment Letter ("news that one

trigger redemptions as shareholders try to avoid a fee or gate. As noted above, however, even if investors redeem, their redemptions eventually could cause a fee or gate to come down, thereby lessening or halting redemptions and mitigating contagion risk.[188] In sum, we are persuaded that fees and gates are important tools that can be used to halt redemptions and prevent contagion during periods of market stress.

ii. Impact on a Fund after Imposing a Fee or Gate

Commenters have suggested that once fees and gates are imposed, they may not be easily lifted without triggering a run.[189] Similarly, other commenters warned that imposing a fee or gate would not help a fund recover from a crisis but rather force it into liquidation because investors would lose trust in the fund and seek to invest in a money market fund that has not imposed a fee or gate.[190] We acknowledge that there is a risk that investors may redeem from a fund after a fee or gate is lifted. We believe this is less likely following the imposition of a fee, however, because investors will continue to have the ability to redeem while a fee is in place and, therefore, may experience less disruption and potentially less loss in trust. In any event, we believe that it is important that money market funds have these tools to give funds the ability to obtain additional liquidity in an orderly fashion if a liquidity crisis occurs, notwithstanding the

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[money market fund] has initiated redemption restrictions could set off a system-wide run by investors who are anxious to redeem their shares before other funds also initiate such fees or restrictions"); Boston Federal Reserve Comment Letter ("[B]ecause of the relative homogeneity in many [money market funds'] holdings, the imposition of a liquidity fee or redemption gate on one fund may incite runs on other funds which are not subject to such measures" (citation omitted)).

188 *See* SIFMA Comment Letter ("[Some] members point out that if a fund's liquidity breaches the trigger level, the gate and fee, themselves, will stem any exodus and damper its effect.").

189 *See, e.g.,* Comment Letter of T. Rowe Price Associates, Inc. (Sept. 17, 2013) ("T. Rowe Price Comment Letter").

190 *See, e.g.,* Schwab Comment Letter ("[W]e have a hard time seeing how any fund that actually imposed fees and/or redemption gates would ever be able to recover and be a viable fund again. Investor trust in that fund would be lost."); Goldman Sachs Comment Letter; J.P. Morgan Comment Letter.

risk that the imposition of a fee or gate may cause some subsequent loss in trust in a fund or may lead to a resumption in heavy redemptions once a fee or gate is lifted. Further, we think it is important to observe that whenever a fee or gate is imposed, the fund may already be under stress from heavy redemptions that are draining liquidity, and the purpose of the fees and gates amendments is to give the fund's board additional tools to address this external threat when the board determines that using one or both of the tools is in the fund's best interests.

Further, to the extent that commenters' concerns about potential loss in trust or risk of a run when a fee or gate is lifted is tied to investor concerns about the sufficiency of the fund's liquidity levels, we note that, under today's amendments, funds will be required to disclose information regarding their liquidity (*e.g.*, daily and weekly liquid assets) on a daily basis. Such disclosure, assuming adequate liquidity, may help ameliorate concerns that investors will run or shift their investment elsewhere after a fund lifts its redemption restrictions because investors will be able to see that a fund is sufficiently liquid. To the extent heavy redemptions resume after a fund lifts a fee or gate, we also note that a fund board may again impose a fee, or gate if the fund has not yet exceeded the 10 business day maximum gating period, if it is in the best interests of the fund.[191] Additionally, while we recognize that fees and gates may cause some investors to leave a fund once it has lifted a fee or gate (or, in the case of a fee, while the fee is in place), which may affect efficiency, competition, and capital formation, we believe it is possible that some investors, particularly those that were not seeking to redeem during the imposition of the fee or gate, may choose to stay in the fund. In this regard, we note that, as discussed above, a liquidity fee would benefit those investors who were not seeking to redeem while a fund's

[191] *See* rule 2a-7(c)(2)(i)(B) (limiting the imposition of gates to 10 business days in any 90-day period).

liquidity was under stress by more equitably allocating liquidity costs among redeeming and non-redeeming shareholders.[192] In addition, to the extent a fund's drop in weekly liquid assets was the result of an external event, if such event resolves while a fee or gate is place, some investors may choose to stay in the fund after the fee or gate is lifted.

In addition, we recognize that a fund board may determine to close a fund and liquidate after the fund has imposed a fee or temporary gate (or instead of imposing a fee or temporary gate) pursuant to amended rule 22e-3.[193] We note, however, that even if a fund ultimately liquidates, its disposition is likely to be more orderly and efficient if it previously imposed a fee or gate. In fact, imposing a fee or gate should give a fund more time to generate greater liquidity so that it will be able to liquidate with less harm to shareholders. Additionally, to the extent a fund's board determines to close the fund and liquidate after the fund has imposed a fee or temporary gate, we anticipate that this would more commonly occur because the imposition of the fee or gate was the result of idiosyncratic stresses on the fund.[194] In this regard, we note that at least one commenter who suggested that a money market fund would likely be forced to liquidate after imposing a fee or gate, also noted that "in a systemic crisis" where many funds may be faced with heavy redemptions and thus the possibility of imposing fees and gates, money market funds "may have a greater likelihood of avoiding liquidation after the systemic crisis [has] subsided."[195]

iii. Investors' Liquidity Needs

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192 *See supra* note 121 and accompanying text.

193 *See infra* section III.A.4 herein discussing amendments to rule 22e-3 that will allow a board to close and liquidate a fund if the fund's weekly liquid assets have dropped below 10%.

194 *See infra* note 195 and accompanying text.

195 *See* J.P. Morgan Comment Letter.

A number of commenters expressed concern that fees or gates could impair money market funds' use as liquid investments, in particular because redemption restrictions (especially gates) would limit or deny shareholders ready access to their funds.[196] Commenters noted such a lack of liquidity could have detrimental consequences for investors, including, for example, corporations and institutions using liquidity accounts for cash management,[197] retail investors needing immediate access to cash such as in a medical emergency or when purchasing a home,[198] and state and local governments that need to make payroll or service bond payments when due.[199]

We recognize that liquidity fees and redemption gates could affect shareholders by potentially limiting, partially or fully (as applicable), the redeemability of money market fund shares under certain conditions, a principle embodied in the Investment Company Act.[200] In our view, however, these reforms should not unreasonably impede the use of money market funds as liquid investments. First, under normal circumstances, when a fund's liquidity is not under stress, the fees and gates amendments will not affect money market funds or their shareholders. Fees and gates are tools for funds to use in times of severe market or internal stress. Second, even when a fund experiences stress, the fees and gates amendments we are adopting today do not require money market funds to impose fees and gates when it is not in the best interests of the fund. Accordingly, we believe these tools can assist funds facing liquidity shortages during

196 *See, e.g.*, Comment Letter of the Boeing Company (Sept. 9, 2013) ("Boeing Comment Letter"); Boston Federal Reserve Comment Letter; BlackRock II Comment Letter.

197 *See, e.g.*, Boeing Comment Letter; Capital Advisors Comment Letter.

198 *See, e.g.*, Comment Letter of the SPARK Institute, Inc. (Sept. 16, 2013) ("SPARK Comment Letter"); Comment Letter of Vanguard (Sept. 17, 2013) ("Vanguard Comment Letter").

199 *See, e.g.*, Comment Letter of Chief Financial Officer, State of Florida (Sept. 12, 2013) ("Fla. CFO Comment Letter"); Comment Letter of Treasurer and Comptroller, St. Louis, Missouri (Sept. 17, 2013) ("St. Louis Treasurer Comment Letter").

200 *See infra* Section III.A.3 (discussing the rationale for the exemptions from the Investment Company Act).

periods of unusual stress, while preserving the benefits of money market funds for investors and the short-term funding markets by not affecting the day-to-day operations of a fund in periods without stress. In fact, a number of commenters observed that fees and gates would be the most effective option of achieving the Commission's reform goals,[201] and would preserve as much as possible the current benefits of money market funds and/or be less onerous day-to-day on funds and investors.[202]

With respect to liquidity fees, we also note that investors will not be prohibited from redeeming their investments; rather, they may access their investments at any time, but their redemptions will be subject to a fee that is designed to make them bear at least some of the costs associated with their access to liquidity rather than externalizing those costs to the remaining fund shareholders. With respect to gates, we recognize that they will temporarily prevent investors from redeeming their investments when imposed. However, we believe gates (as well as fees) will rarely be imposed in normal market conditions. In our view, in those likely rare situations where a gate would be imposed, investors would (in the absence of the gating mechanism) potentially be left in worse shape if the fund were, for example, forced to engage in the sale of assets and thus incur permanent losses; or worse, if the fund were forced to liquidate because of a severe liquidity crisis. Thus, we believe that allowing fund boards to impose gates should not be viewed as detrimental to funds, but rather should be viewed as an interim measure boards can employ in worse case scenarios where the alternative would likely be a result

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201 *See, e.g.*, Fidelity Comment Letter; Deutsche Comment Letter; Comment Letter of SunTrust Bank and SunTrust Investment Services (Sept. 16, 2013) ("SunTrust Comment Letter").

202 *See, e.g.*, Comment Letter of Plan Investment Fund, Inc. (Sept. 16, 2013) ("Plan Inv. Fund Comment Letter"); IDC Comment Letter; HSBC Comment Letter.

potentially more detrimental to investors' overall interests. To the extent that some investors may be sufficiently concerned about their ability to access their investment to meet certain obligations, such as payroll or bills, we believe they may choose to manage their money market fund investments so as to be able to meet these obligations if a redemption gate should be imposed.[203]

While we recognize these commenter concerns regarding liquidity, we believe that the overall benefits and protections that are provided by the fees and gates amendments to all investors in these money market funds outweigh these concerns. Furthermore, we note that the final amendments have been modified and tailored to mitigate some potentially disruptive consequences of fees and gates. For example, under the final amendments, gates cannot be imposed for more than 10 business days in any 90-day period, so, to the extent an investor's access to his/her money is inhibited, it is for a limited period of time, which may allow an investor to better prepare for and withstand a possible gate. We also note, as discussed above, that funds are currently permitted to impose permanent redemption gates in certain circumstances.[204] Therefore, we believe that the gating allowed by today's amendments extends and formalizes the existing gating framework, clarifying for investors when a money market fund potentially may use a gate as a tool to manage heavy redemptions and thus prevents any investor confusion on when gating may apply. While we recognize that the permanent redemption gates allowed under rule 22e-3 have not yet been used by money market funds, we

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203 We recognize that some investors may choose to move their money out of affected money market funds due to concern that a fee or gate may be imposed in the future. For a discussion of investor movement out of money market funds, *see infra* section III.K.

204 *See* rule 22e-3.

note that investors have widely utilized money market funds as cash management vehicles even with the possibility of these permanent gates under an existing rule. Moreover, to the extent an investor wants to invest in a money market fund without the possibility of fees and/or gates, it may choose to invest in a government money market fund, which is not subject to the fees and gates requirements.[205]

iv. Investor Movement out of Money Market Funds

Some commenters expressed concern that the possibility of fees and gates being imposed could result in diminished investor appeal and/or utility of affected money market funds, and could cause investors to either abandon or severely restrict use of affected money market funds.[206] For example, commenters suggested that fees and gates would drive sweep account money out of money market funds.[207] Commenters warned that fees and gates may cause investors to shift investments into other assets, government money market funds, FDIC-insured accounts and other bank products, riskier and/or less regulated investments, or other alternative stable value products.[208] Conversely, other commenters predicted only minor effects on investor

205 *See infra* section III.C.1.

206 *See, e.g.,* Ky. Inv. Comm'n Comment Letter; Boeing Comment Letter; Schwab Comment Letter; American Bankers Ass'n, Comment Letter.

207 *See* Fin. Info. Forum Comment Letter ("Charging a liquidity fee and imposing gates effectively removes money market funds as a sweep vehicle since these accounts are designed to be a liquidity product and firms will no longer be able to guarantee liquidity."); Comment Letter of M&T Banking Corporation (Oct. 1, 2013) ("M&T Bank Comment Letter") (suggesting fees and gates would "drive most commercial banking clients from prime money market fund sweep accounts"); SIFMA Comment Letter.

208 *See, e.g.,* Northern Trust Comment Letter; M&T Bank Comment Letter; Schwab Comment Letter; *but see* Invesco Comment Letter (suggesting that investor opposition to fees and gates could be addressed in part by greater education regarding the circumstances in which the gates would be imposed); Peirce and Greene Comment Letter (suggesting that to the extent gates in particular make money market funds less attractive to certain investors, this would be "a positive step toward helping them find appropriate investments for their needs."); *see also* Comment Letter of Fidelity Investments (Apr. 22, 2014) ("Fidelity DERA Comment Letter"); Comment Letter of BlackRock, Inc. (Apr. 23, 2014) ("BlackRock DERA Comment Letter").

demand and/or that investor demand would decrease less under the proposed fees and gates alternative than under the proposed floating NAV alternative.[209]

We recognize that, as suggested by certain commenters, our amendments could cause some shareholders to redeem their prime money market fund shares and move their assets to alternative products that do not have the ability to impose fees or gates because the *potential* imposition of a fee or gate could make investment in a money market fund less attractive due to less certain liquidity.[210] As noted above, this could affect efficiency, competition, and capital formation. We agree with one commenter that suggested it is difficult to estimate the extent to which assets might shift from prime funds to government funds or other alternatives.[211] As discussed above, some investors may determine they are comfortable investing in money market funds that may impose fees and gates, because fees and gates will likely be imposed only during

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209 *See, e.g.*, Comment Letter of Cathy Santoro (Sept. 17, 2013) ("Santoro Comment Letter"); Comment Letter of Arnold & Porter LLP on behalf of Federated Investors (Costs of Implementing the Proposals) (Sept. 17, 2013) ("Federated X Comment Letter").

210 *See* Comment Letter of SunGard Institutional Brokerage Inc. (Sept. 13, 2013) ("SunGard Comment Letter") (finding in a survey of its corporate, government and pension plan customers that 76% of respondents would decrease their use of money market funds substantially or entirely, but that only 22% of respondents would stop using money market funds entirely); Comment Letter of Fidelity (Feb. 3, 2012) (available in File No. 4-619) ("Fidelity Feb. 3 Comment Letter") (finding in a survey of their retail money market fund customers that 43% would stop using a money market fund with a 1% non-refundable redemption fee charged if the fund's NAV per share fell below $0.9975 and 27% would decrease their use of such a fund); Comment Letter of Federated Investors, Inc. on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 25, 2012) *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf ("Federated IOSCO Comment Letter") (stating that they anticipate "that many investors will choose not to invest in MMFs that are subject to liquidity fees, and will redeem existing investments in MMFs that impose a liquidity fee" but noting that "[s]hareholder attitudes to redemption fees on MMFs are untested"); *but see* Invesco Comment Letter (suggesting that investor opposition to fees and gates could be addressed in part by greater education regarding the circumstances in which the gates would be imposed).

211 *See* Comment Letter of Federated Investors, Inc. (Demand and Supply of Safe Assets) (Apr. 23, 2014) ("Federated DERA I Comment Letter") (suggesting an "inability to predict how many assets might shift from prime and municipal MMFs to government MMFs in response to adoption [of] [a]lternative 1 or 2, or a combination thereof" and recommending that the Commission consider a "range of outcomes" when analyzing a possible shift out of prime money market funds and into government money market funds). The commenter also noted that it has "not found any basis for estimating the extent to which prime and municipal MMF shareholders would prefer bank instruments to government MMFs." *See id.*

times of stress and should not affect the daily operations of money market funds during normal market conditions.[212] Other investors, however, may reallocate their assets to investment alternatives that are not subject to fees and gates, such as government money market funds.[213]

One potential issue related to market efficiency that several commenters raised was a potential shortage of eligible government securities if investors reallocate assets from funds that are subject to fees and gates into government funds.[214] We anticipate that any increase in demand for eligible government securities because of the fees and gates requirement would likely be accompanied by an additional increase in demand arising from investors that reallocate assets from institutional prime funds because of the floating NAV requirement. As such, we discuss the reforms' joint impact on the demand for eligible government securities and possible repercussions on the economy and capital formation in section III.K below.

In addition, a number of commenters noted that a possible shift out of affected money market funds could ultimately lead to a decrease in the funding of, or other adverse effects on,

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212 *See, e.g.,* Invesco Comment Letter ("[W]e believe that additional education about the purpose and operation of the proposed liquidity fees and redemptions gates and the circumstances in which they might be implemented would increase greatly MMF investors' willingness to accept them."); Goldman Sachs Comment Letter ("[S]ome of our investors have told us that they could accept the prospect of liquidity fees and gates ...."); Comment Letter of Tom Garst (Aug. 30, 2013) ("Garst Comment Letter") (suggesting that gates would be the "most acceptable alternative" out of those proposed); Capital Advisors Comment Letter ("[W]e think shareholders may accept a cost of liquidity in a stressful situation ...."). We note that, under today's amendments, institutional prime funds will be subject to the fees and gates requirements as well as a floating NAV requirement, and that investor acceptance of fees and gates for these funds may be different. *See, e.g.,* ICI Comment Letter (suggesting a fund that is subject to fees and gates and a floating NAV will be "a fund which nobody will want"); *see also infra* section III.B for a discussion of the floating NAV requirement and any investor movement out of money market funds as result of such requirement.

213 Government money market funds also will not be subject to the floating NAV requirement adopted today. *See infra* section III.C.1. In addition, as noted above, all money market funds today have the option to impose a permanent redemption gate and liquidate under rule 22e-3 under the Investment Company Act. While we recognize that these permanent redemption gates have not yet been used by money market funds, we note that they have not led to the migration of investors away from money market funds.

214 *See, e.g.,* Fidelity DERA Comment Letter.

the short-term financing markets.[215] The Commission recognizes the expected benefits from today's amendments may be accompanied by adverse effects on issuers that access the short-term financing markets with consequent effects on competition and capital formation. As discussed in greater detail in section III.K below, the magnitude of these effects, including any effects on competition, efficiency, and capital formation, will depend on the extent to which investors reallocate their investments within or outside the money market fund industry and which alternatives investors choose.

Some commenters also suggested that fees and gates could motivate money market funds to hold securities of even shorter-term duration, which could encourage issuers to fund themselves with shorter-term debt.[216] Shortening debt maturity would increase the frequency at which issuers would need to refinance, leaving both issuers and the broad financial system more vulnerable to refinancing risk.[217] One such commenter further noted that basing the threshold for fees and gates on weekly liquid assets will "discourage[e] prime money market funds from drawing down on their buffers of liquid assets [due to fear of crossing below the fees and gates thresholds] precisely when they should do so from a system-wide perspective, *i.e.*, in a system-wide liquidity and funding crisis."[218] In addition, some commenters were concerned about a loss of funding or other adverse impacts on state and local governments as a result of the fees and gates amendments.[219] We discuss these concerns in section III.K below.

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215 *See, e.g.,* MFDF Comment Letter; Comment Letter of Arizona Association of County Treasurers (Sept. 16, 2013) ("Ariz. Ass'n of County Treasurers Comment Letter"); Northern Trust Comment Letter.

216 *See* Hanson *et al.* Comment Letter; Deutsche Comment Letter.

217 *See generally* Hanson *et al.* Comment Letter; Deutsche Comment Letter.

218 *See, e.g.,* Hanson *et al.* Comment Letter.

219 *See, e.g.,* Comment Letter of Governor, Commonwealth of Massachusetts (Deval L. Patrick) (Sept. 17,

2. *Terms of Fees and Gates*

As discussed above, we are adopting provisions that, unlike the proposal, will allow a money market fund the flexibility to impose fees (up to 2%)[220] and/or gates (up to 10 business days in a 90-day period)[221] after the fund's weekly liquid assets have crossed below 30% of its total assets, if the fund's board of directors (including a majority of its independent directors) determines that doing so is in the best interests of the fund.[222] We are also adopting amendments that will require a money market fund, if its weekly liquid assets fall below 10% of its total assets, to impose a 1% liquidity fee on each shareholder's redemption, unless the fund's board of directors (including a majority of its independent directors) determines that such a fee would not be in the best interests of the fund, or determines that a lower or higher fee (not to exceed 2%) would be in the best interests of the fund.[223] The proposal would have required funds (absent a board determination otherwise) to impose a 2% liquidity fee on all redemptions, and would have permitted the imposition of redemption gates for up to 30 days in a 90-day period, after a fund's weekly liquid assets fell below 15% of its total assets. In addition, unlike in the proposal, today's amendments will allow a fund to impose a fee or gate at any point throughout the day

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2013) ("Mass. Governor Comment Letter"); Comment Letter of Office of the Governor, State of New Hampshire (Oct. 4, 2013) ("NH Governor Letter"); Comment Letter of Treasurer, State of North Carolina (Sept. 19, 2013) ("NC Treasurer Comment Letter"); Comment Letter of 42 Members of U.S. Congress (Oct. 28, 2013) ("42 Members of U.S. Congress Comment Letter"). Some commenters cited the role of municipal money market funds as a funding mechanism for state and local governments, arguing such role might be endangered by the proposed reforms. *See, e.g.*, Fidelity Comment Letter; J.P. Morgan Comment Letter.

220 *See infra* notes 300-302 and accompanying text.

221 Rule 2a-7(c)(2)(i)(B).

222 Rule 2a-7(c)(2)(i). The fund must reject any redemption requests it receives while the fund is gated. *See* rule 2a-7(c)(2)(i)(B).

223 Rule 2a-7(c)(2)(ii). If a fund imposes a liquidity fee, a fund's board can later vary the level of the liquidity fee (subject to the 2% limit) if the board determines that a different fee level is in the best interests of the fund. Rule 2a-7(c)(2)(i)(A) and (ii)(B).

after a fund's weekly liquid assets have dropped below 30%.[224]

As in the proposal, any fee or gate imposed under today's amendments must be lifted automatically after the money market fund's level of weekly liquid assets rises to or above 30%, and it can be lifted at any time by the board of directors (including a majority of independent directors) if the board determines to impose a different redemption restriction (or, with respect to a liquidity fee, a different fee) or if it determines that imposing a redemption restriction is no longer in the best interests of the fund.[225] As amended, rule 22e-3 also will permit the permanent suspension of redemptions and liquidation of a money market fund if the fund's level of weekly liquid assets falls below 10% of its total assets.[226]

a. Thresholds for Fees and Gates

i. Discretionary Versus Mandatory Thresholds

As proposed, a fund would have been required (unless the board determined otherwise) to impose a default liquidity fee, and would have been permitted to impose a gate, after the fund's weekly liquid assets dropped below 15% of its total assets. In addition, a fund would have had to wait to impose a fee or gate until the next business day after it crossed below the 15% threshold.

Commenters ranged widely over whether and to what extent the trigger for fees and gates should be an objective test or left to the discretion of fund boards. On one hand, a group of commenters expressed concern about giving money market fund boards discretion to impose fees

224 *See* rule 2a-7(c)(2)(i).

225 Rule 2a-7(c)(2)(i)(A)-(B) and (ii)(B).

226 *See* rule 22e-3(a)(1). To mirror the proposed fees and gates amendments to rule 2a-7, the proposed amendments to rule 22e-3 would have set a threshold of below 15% weekly liquid assets for a fund to permanently close and liquidate. For a discussion of amended rule 22e-3, *see infra* section III.A.4.

and gates.[227] For example, some commenters noted that board discretion could create uncertainty among investors,[228] and that boards might be reticent, due to the possible impact of the decision, to act in a time of crisis.[229]

On the other hand, a large group of commenters generally argued in favor of giving boards more discretion over whether to impose a fee or gate.[230] For example, a number of commenters expressly noted that fees should be at the discretion of fund boards instead of being automatically triggered at a particular liquidity threshold.[231] A number of other commenters argued more generally that, when heavy redemptions are already underway or clearly foreseeable, boards should be able to impose fees and gates even before a set liquidity threshold or some other objective threshold has been crossed.[232]

We continue to believe that a hybrid approach that at some point imposes a default fee that boards can opt out of or change best ensures that fees and gates will be imposed when it is appropriate. Based on commenter feedback, however, we believe that such a hybrid approach could benefit from the default fee acting more as a floor for board consideration when liquidity

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227 *See, e.g.*, BlackRock II Comment Letter; Capital Advisors Comment Letter; Fidelity Comment Letter; HSBC Comment Letter; *cf.* Comment Letter of The Independent Trustees of the Fidelity Fixed-Income and Asset Allocation Funds (Sept. 10, 2013) ("Fidelity Trustees Comment Letter") (suggesting that the Commission should have the ability to impose a fee on prime money market funds when a fund's weekly liquid assets fall below 15%).

228 *See, e.g.*, BlackRock II Comment Letter; Fidelity Comment Letter.

229 *See, e.g.*, Capital Advisors Comment Letter; HSBC Comment Letter ("[S]ome commentators have suggested that a fund board may be too commercially conflicted to decide whether to impose a liquidity fee.").

230 *See, e.g.*, Chamber II Comment Letter; Dreyfus Comment Letter; Invesco Comment Letter.

231 *See, e.g.*, Federated V Comment Letter; HSBC Comment Letter; T. Rowe Price Comment Letter; Peirce & Green Comment Letter; *cf.*, BlackRock Comment Letter (advocating a mandatory gate after assets dropped below 15% weekly liquid assets, but also allowing money market fund boards "the ability to impose a gate before weekly liquid assets fell below 15% of total assets if the [b]oard believed this was in the best interest of the [money market fund]").

232 *See., e.g.*, BlackRock II Comment Letter; Chamber II Comment Letter; Federated V Comment Letter.

has been significantly depleted and from additional board discretion to impose fees and gates in advance of that point.[233] Thus, our final approach – while still a hybrid approach – is significantly more discretionary than under our proposal. As we indicated in the Proposing Release, we believe a hybrid approach offers the possibility of achieving many of the benefits of both a purely discretionary trigger and a fully automatic trigger. We recognize that a discretionary trigger allows a fund board the flexibility to determine when a restriction is necessary, and thus allows the board to trigger the fee or gate based on current market conditions and the specific circumstances of the fund.

A purely discretionary trigger, however, creates the risk that a fund board may be reluctant to impose restrictions, even when they would benefit the fund and the short-term financing markets. As commenters indicated,[234] a board may choose not to impose a fee or gate for commercial reasons – for example, out of fear that doing so would signal trouble for the individual fund or fund complex (and thus may incur significant negative business and reputational effects) or could incite redemptions in other money market funds in the fund complex in anticipation that fees may be imposed in those funds as well. We are also concerned that purely discretionary triggers could cause some funds to use fees and gates when they are not under stress and in contravention of the principles underlying the Investment Company Act. If, for example, a fund's NAV began to fall due to losses incurred in the portfolio, a board with full discretion to impose fees on fund redemptions could impose a fee solely to recover those losses and repair the fund's NAV, even if that fund's liquidity is not being stressed.

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233 *See supra* section III.A.1.c.i (discussing the impact of board discretion on possible pre-emptive runs); *see also* Wells Fargo Comment Letter.

234 *See supra* note 229.

As discussed in the Proposing Release, we recognize that although an automatic trigger set by the Commission may mitigate some of the potential concerns associated with a fully discretionary trigger, it also may create the risk of imposing costs on shareholders, such as those related to board meetings or liquidity fees themselves, when funds are not truly distressed or when liquidity is not abnormally costly. As indicated by a number of commenters and discussed above, an automatic trigger also could result in shareholders pre-emptively redeeming their shares to avoid a fee or gate.[235] In addition, commenters suggested that a fund's liquidity could quickly evaporate once heavy redemptions begin and that a fund board should not have to wait until the fund's weekly liquid assets breach the default liquidity fee threshold or until the next business day in order to act.[236]

In light of these risks and in response to the comments discussed above, we have determined to increase the amount of board discretion under the fees and gates amendments so that funds may impose fees or gates before the default liquidity fee threshold is reached and so they can better tailor the redemption restrictions to their particular circumstances. Additionally, the amendments will allow fund boards to impose fees and gates the same day that a fund experiences or foresees heavy redemptions and, thus, funds will not have to wait until the next day to act.[237] This increased flexibility should better allow fund boards to prevent or stem heavy redemptions before they occur, or as soon as possible after they begin or are anticipated.[238]

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235 *See supra* section III.A.1.c.i for a discussion regarding pre-emptive run risk and increased board discretion.

236 *See, e.g.*, Federated II Comment Letter; Dreyfus Comment Letter.

237 Although funds will have to wait until a fund's weekly liquid assets drop below 30% in order to impose a fee or gate, we believe the higher threshold of 30% for discretionary fees and gates should assuage concerns about having to wait to impose redemption restrictions until a fund's weekly liquid assets breach the default liquidity fee threshold.

238 *See, e.g.*, Treasury Strategies III Comment Letter ("We found that [f]ees and [g]ates can stop and prevent

ii. Threshold Levels

As discussed above, funds will be permitted to impose fees and gates after a fund's weekly liquid assets have dropped below 30%, and will be required to impose a liquidity fee after a fund's weekly liquid assets drop below 10%, unless the fund's board determines such fee is not in the best interests of the fund. As proposed, the threshold for the imposition of fees and gates would have been a drop below 15% weekly liquid assets and a fund's board could have determined that a fee would not be in the best interests of the fund.

Various commenters proposed modifications or substitutes to the proposed 15% weekly liquid assets threshold. For example, one commenter, citing a survey of its members, suggested fund boards be given discretion to impose a liquidity fee when weekly liquid assets fall below a specified threshold, and that a default liquidity fee could be imposed at a specified lower level of weekly liquid assets (unless the board determines otherwise).[239] Another commenter proposed a blended trigger for the imposition of gates at 30% weekly liquid assets or a drop in NAV below \$0.995, whichever comes first.[240]

As discussed in this section, we have been persuaded by commenters that boards should be allowed some flexibility to impose a fee or gate when heavy redemptions are underway or clearly foreseeable. As was suggested by a commenter,[241] we are adopting a tiered threshold for

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runs, provided that they are implemented effectively through policy and preemptive action by fund boards."). For example, if a fund board believes that a fund's weekly liquid assets are likely to fall below the 10% weekly liquid asset threshold for a default liquidity fee, it could choose to impose a liquidity fee prior to the fund breaching this threshold.

239 *See* SIFMA Comment Letter.

240 *See* Capital Advisors Comment Letter.

241 *See* SIFMA Comment Letter; *but see, e.g.,* Peirce & Greene Comment Letter (suggesting the Commission should adopt entirely discretionary gates).

the imposition of fees and gates, with a higher threshold for discretionary fees and gates and a lower threshold for default liquidity fees. We believe this tiered approach will allow boards to determine with greater flexibility the best line of defense against heavy redemptions and to tailor that defense to the specific circumstances of the fund. We also believe this tiered approach will allow boards to act quickly to stem heavy redemptions. This approach also recognizes, however, that at a certain point (under the amended rule, a drop below 10% weekly liquid assets), boards should be required to consider what, if any, action should be taken to address a fund's liquidity.

We are adopting a threshold of less than 30% weekly liquid assets at which fund boards will be able to impose discretionary fees and gates, as was suggested by a commenter.[242] As 30% weekly liquid assets is the minimum required under rule 2a-7, we believe it is an appropriate threshold at which fund boards should be able to consider fees and gates as measures to stop heavy redemption activity that may be building in a fund.[243] A drop in weekly liquid assets below the regulatory minimum could indicate current or future liquidity problems or forecast impending heavy redemptions, or it could be the result of idiosyncratic stresses that may be resolved without intervention – in either case, the money market fund's board, in consultation with the fund's investment adviser, is best suited to determine whether fees and gates can address

242 *See* Capital Advisors Comment Letter. As discussed below, we have not included an NAV trigger along with the weekly liquid assets trigger (as suggested by the commenter) because we do not believe that a fund's NAV is an appropriate trigger for liquidity fees and redemption gates. *See infra* note 253 and accompanying text.

243 As was discussed in the Proposing Release, we considered a threshold based on the level of daily liquid assets rather than weekly liquid assets. We noted in the Proposing Release that we expect that a money market fund would meet heightened shareholder redemptions first by depleting the fund's daily liquid assets and next by depleting its weekly liquid assets, as daily liquid assets tend to be the most liquid. Thus, we believe that basing the threshold on weekly liquid assets rather than daily liquid assets provides a better picture of the fund's overall liquidity position. In addition, a fund's levels of daily liquid assets may be more volatile because they are typically used first to satisfy day-to-day shareholder redemptions, and thus more difficult to use as a gauge of fund distress. Commenters did not specifically suggest a threshold based on daily liquid assets.

the situation.[244]

Some commenters recommended that the default liquidity fee threshold be lowered to 10% weekly liquid assets.[245] These commenters generally argued that a 10% threshold, rather than a 15% threshold, would produce fewer "false positives" – instances when a money market fund is, in fact, not experiencing stress on its liquidity but is nonetheless required (absent a board finding) to impose a liquidity fee – which should prevent unnecessary board meetings that would not be in the interest of shareholders or market stability.[246] As was discussed in the Proposing Release, the threshold for a default liquidity fee should indicate distress in a fund and be a threshold few funds would cross in the ordinary course of business. Commission staff analysis shows that from March 2011 through October 2012, there was only one month that any funds reported weekly liquid assets below 15% and only one month that a fund reported weekly liquid assets below 10%.[247]

In light of commenters' concerns and the Commission staff analysis, and in recognition of the increased board discretion to impose fees and gates that we are adopting in today's

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244 For a discussion of the factors a board may wish to consider in determining whether to impose fees and gates, *see infra* section III.A.2.b herein. For a discussion of the factors a board may wish to consider in determining the level of a liquidity fee, *see infra* section III.A.2.c herein.

245 *See, e.g.,* Federated V Comment Letter; Comment Letter of Chairman, Federated Funds Board of Directors (on behalf of Independent Trustees of Federated Funds) (Sept. 16, 2013) ("Federated Funds Trustees Comment Letter"); HSBC Comment Letter.

246 *See* Federated II Comment Letter; HSBC Comment Letter.

247 *See* Proposing Release *supra* note 25, at 177. Our staff conducted an analysis of Form N-MFP data that showed that if the default fee triggering threshold was between 25-30% weekly liquid assets, funds would have crossed this threshold every month except one during the period, and if it was set at between 20-25% weekly liquid assets, some funds would have crossed it nearly every other month. The analysis further showed that during the period, there was one month in which funds reported weekly liquid assets below 15% (four funds in June 2011) and one month in which a fund reported weekly liquid assets below 10% (one fund in May 2011). Based on this data and industry comment, we proposed a default fee threshold of 15% weekly liquid assets.

amendments, we have determined that a threshold of 10% weekly liquid assets (down from the proposed 15%) is an appropriate threshold for the imposition of a default liquidity fee. We believe that the flexibility in today's amendments justifies a decrease in the default liquidity fee threshold, particularly because fund boards will be allowed to impose discretionary fees and gates, if it is in the best interests of a fund, at any time after a fund's weekly liquid assets drop below 30% – *i.e.,* before the default liquidity fee threshold is reached.[248] Our proposal, which, as noted above, set a higher threshold for the default liquidity fee or the imposition of a gate, did not include board discretion to use these tools prior to reaching this threshold. Under today's amendments, however, the 10% default liquidity fee threshold is designed effectively as a floor to require fund boards to focus on a fund's liquidity and to consider what action to take, if any, before liquidity is further depleted. Additionally, Commission staff analysis shows that a 10% threshold for the default liquidity fee is also a threshold few funds would cross in the ordinary course of business.[249]

Some commenters on the fees and gates threshold suggested moving away from weekly liquid asset levels as the triggering mechanism.[250] One commenter noted that the most

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248 *See* rule 2a-7(c)(2)(i); *cf.* Treasury Strategies III Comment Letter (suggesting that fees and gates will better prevent a run if they are imposed intraday).

249 *See* Proposing Release *supra* note 25, at 177 (setting forth a chart that show from March 2011 through October 2012, there was only one month that any funds reported weekly liquid assets below 15% and only one month that a fund reported weekly liquid assets below 10%). Because liquidity data reported to the Commission is as of month end, it could be the case that more than one money market fund's level of weekly liquid assets fell below 10% on other days of the month during our period of study. However, this number may overestimate the percentage of funds that are expected to impose a default liquidity fee because funds may increase their risk management around their level of weekly liquid assets in response to the default liquidity fee to avoid breaching the default liquidity fee threshold, or that many funds may impose fees and/or gates after they cross the 30% threshold, allowing them to repair their liquidity prior to reaching the 10% threshold.

250 *But see* Fidelity Comment Letter ("We also favor using the weekly liquid asset level as the measure because it is the best indicator of liquidity and is less susceptible to extraneous factors. In addition, the

appropriate rules-based threshold would be if the shadow price fell to $0.9975 or below.[251] Another commenter also suggested that, to the extent the Commission moved forward with a rules-based threshold, "defaults, acts of insolvency, significant downgrades or determinations that a portfolio security no longer presents minimum credit risk" should be added to the situations in which a board could impose a fee or gate.[252]

We do not believe a drop in a fund's NAV (or shadow price, to the extent the money market fund is a stable value fund), or a default, act of insolvency, significant downgrade or determination that a portfolio security no longer presents minimum credit risk, would be the appropriate threshold for the imposition of fees and gates. First, as we discussed in the Proposing Release, we are concerned that a money market fund being able to impose a fee only when the fund's NAV or shadow price has fallen by some amount may in certain cases come too late to mitigate the potential consequences of heavy redemptions on a fund's liquidity and to fully protect investors.[253] Heavy redemptions can impose adverse economic consequences on a money market fund even before the fund actually suffers a loss. They can deplete the fund's

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weekly liquidity structure reflects daily liquidity within its calculation."). As noted in section III.A.2.a.i, a number of commenters argued for giving boards the discretion to impose redemption restrictions. *See supra* note 230.

251 *See* HSBC Comment Letter; *see also* Comment Letter of HSBC Global Asset Management Ltd (Feb. 15, 2013) (available in File No. FSOC–2012–0003) ("HSBC FSOC Comment Letter") (suggesting setting the market-based NAV trigger at $0.9975). This commenter asserted that such a trigger would ensure that shareholders only pay a fee when redemptions would actually cause the fund to suffer a loss and thus redemptions clearly disadvantage remaining shareholders.

252 *See* Federated II Comment Letter.

253 As we also discussed in the Proposing Release, a threshold based on shadow price raises questions about whether and to what extent shareholders differentiate between realized (such as those from security defaults) and market-based losses (such as those from market interest rate changes) when considering a money market fund's shadow price. If shareholders do not redeem in response to market-based losses (as opposed to realized losses), it may be inappropriate to base a fee on a fall in the fund's shadow price if such a fall is only temporary. On the other hand, a temporary decline in the shadow price using market-based factors can lead to realized losses from a shareholder's perspective if redemptions cause a fund with an impaired NAV to "break the buck." *See* Proposing Release *supra* note 25, at 179-180.

most liquid assets so that the fund is in a substantially weaker position to absorb further redemptions or losses. Second, the thresholds we are adopting today are just that – thresholds. If it is not in the best interests of a fund, a board is not required to impose a liquidity fee or redemption gate when the fund's weekly liquid assets have fallen below 30% or 10%, respectively. Moreover, once a fund has crossed below a weekly liquid asset threshold, a board is not prevented from taking into account whether the fund's NAV or shadow price has deteriorated in considering whether to impose fees or gates. Finally, the fees and gates amendments are intended to address the liquidity of the fund and its ability to meet redemptions, not to address every possible circumstance that may adversely affect a money market fund and its holdings. However, if a particular circumstance, such as a default, act of insolvency, significant downgrade, or increased credit risk, affects the liquidity of a fund such that its weekly liquid assets drop below the 30% threshold for imposition of fees and gates, a fund could then impose a fee or gate.

Another commenter suggested basing the threshold for redemption gates on the level at which a money market fund's liquidity would force it to sell assets.[254] This particular commenter was concerned that a threshold based on 15% weekly liquid assets might otherwise cause funds close to the threshold to start selling assets to avoid crossing the threshold, which could have a larger destabilizing effect on the markets.[255] We appreciate the commenter's concerns and believe that the higher weekly liquid asset threshold for the imposition of fees and gates and the increased board flexibility included in today's amendments should lessen such a risk. In

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254 Comment Letter of James Angel (Georgetown/Wharton) (Sept. 17, 2013) ("Angel Comment Letter").

255 Angel Comment Letter.

particular, as discussed above in section III.A.1.c.i, we believe that the 30% weekly liquid assets threshold will allow a money market fund to impose a fee or gate while it still has substantial remaining internal liquidity, thus putting it in better position to bear redemptions without a broader market impact because it can satisfy redemption requests through internally generated cash and not through asset sales (other than perhaps sales of government securities that tend to increase in value and liquidity in times of stress). In addition, the board flexibility in today's amendments could result in funds imposing gates at different times and, thus, to the extent funds determine to dispose of their assets to raise liquidity, it could also result in funds disposing assets at different times, lessening any potential strain on the markets.

b. Board Determinations

In the Proposing Release, we discussed a number of factors that a fund's board of directors may want to consider in determining whether to impose a liquidity fee or redemption gate.[256] We received a variety of comments related to these factors and, more generally, about board determinations regarding fees and gates. Some commenters suggested that the Commission provide additional guidance on the nature and scope of the findings that boards can make.[257] A commenter asked the Commission to provide an expanded list of examples and a non-exclusive list of factors to be considered by boards with respect to imposing a fee or gate.[258] The commenter added that the Commission should clarify that boards need to consider only those factors they reasonably believe to be relevant, not all factors or examples that the

256 *See* Proposing Release, *supra* note 25, at 178-179.

257 *See, e.g.,* ABA Business Law Section Comment Letter; Comment Letter of New York City Bar Committee on Investment Management Regulation (Sept. 26, 2013) ("NYC Bar Committee Comment Letter"); Federated X Comment Letter; *but see, e.g.,* MFDF Comment Letter.

258 *See* NYC Bar Committee Comment Letter.

Commission might generally suggest.[259]

In contrast, another commenter, an industry group representing fund directors, supported the Commission providing only minimal guidance on what factors boards might consider.[260] This commenter argued that "providing any guidance on what factors boards should consider (beyond the very general and non-exclusive examples in the Proposing Release) is likely to be counter-productive."[261] The commenter also suggested that the Commission clarify that a "best interests of the fund" standard would not demand that boards place significant emphasis on the broader systemic effects of their decision.[262]

The "best interests" standard in today's amendments recognizes that each fund is different and that, once a fund's weekly liquid assets have dropped below the minimum required by rule 2a-7, a fund's board is best suited, in consultation with the fund's adviser, to determine when and if a fee or gate is in the best interests of the fund.[263] The factors we set forth in the Proposing Release were intended only as possible factors a board may consider when making a best interests determination. They were not meant to be a one-size-fits-all or exhaustive list of factors. We agree with the commenter who suggested an exclusive list of factors could be counter-productive. We recognize that there are differences among funds and that the markets are dynamic, particularly in a crisis situation. Accordingly, an exhaustive list of factors may not address each fund's particular circumstances and could quickly become outdated. Instead, we

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259 *Id.*

260 *See* MFDF Comment Letter.

261 *Id.*

262 *See id.*

263 For a discussion of why the Commission is adopting a hybrid approach to the imposition of fees and gates, *see supra* section III.A.2.a.i.

believe a fund board should consider any factors it deems appropriate when determining whether fees and/or gates are in the best interests of a fund. We note that these factors may include the broader systemic effects of a board's decision, but point out that the applicable standard for a board's determination under the amended rule is whether a fee or gate is in the fund's best interests.

Nonetheless, we believe it is appropriate to provide certain guideposts that boards may want to keep in mind, as applicable and appropriate, when determining whether a fund should impose fees or gates and are providing such guidance in this Release. As recognized in the Proposing Release, there are a number of factors a board may want to consider. These may include, but are not limited to: relevant indicators of liquidity stress in the markets and why the fund's weekly liquid assets have fallen (*e.g.*, Have weekly liquid assets fallen because the fund is experiencing mounting redemptions during a time of market stress or because a few large shareholders unexpectedly redeemed shares for idiosyncratic reasons unrelated to current market conditions or the fund?); the liquidity profile of the fund and expectations as to how the profile might change in the immediate future, including any expectations as to how quickly a fund's liquidity may decline and whether the drop in weekly liquid assets is likely to be very short-term (*e.g.*, Will the decline in weekly liquid assets be cured in the next day or two when securities currently held in the fund's portfolio qualify as weekly liquid assets?);[264] for retail and government money market funds, whether the fall in weekly liquid assets has been accompanied

264 As discussed in the Proposing Release, many money market funds "ladder" the maturities of their portfolio securities, and thus it could be the case that a fall in weekly liquid assets will be rapidly cured by the portfolio's maturity structure. *See* Proposing Release, *supra* note 25, at 179.

by a decline in the fund's shadow price;[265] the make-up of the fund's shareholder base and previous shareholder redemption patterns; and/or the fund's experience, if any, with the imposition of fees and/or gates in the past.

Some commenters urged the Commission to affirm that a board's deliberations would be protected by the business judgment rule.[266] One commenter was particularly concerned about the threat of litigation if boards were not protected by the rule, as it could "chill the board's ability to act in a manner that would be highly counterproductive in times of market stress."[267] While sensitive to this commenter's concerns, we do not believe it would be appropriate for us to address the application of the business judgment rule because the business judgment rule is a construct of state law and not the federal securities laws.

Other commenters proposed that boards should be permitted to reasonably determine and commit themselves in advance to a policy to not allow a fee or gate to ever be imposed on a fund.[268] We disagree. A blanket decision on the part of a fund board to not impose fees or gates, without any knowledge or consideration of the particular circumstances of a fund at a given time, would be flatly inconsistent with the fees and gates amendments we are adopting today, which, at a minimum, require a fund to impose a liquidity fee when its weekly liquid assets have dropped below 10%, unless the fund's board affirmatively finds that such fee is not in the best interests of the fund. As discussed above, we believe that when a fund falls below 10% weekly

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265 Likewise, a floating NAV fund's board may wish to consider any drops in the fund's NAV.

266 *See, e.g.,* Dreyfus Comment Letter; Chamber II Comment Letter; MFDF Comment Letter; IDC Comment Letter.

267 *See* MFDF Comment Letter.

268 *See* Goldman Sachs Comment Letter; ABA Business Law Section Comment Letter. These commenters were concerned that uncertainties over a fee or gate could lead to pre-emptive runs. We discuss pre-emptive runs in section III.A.1.c.i of this Release.

liquid assets, its liquidity is sufficiently stressed that its board should be required to consider, based on the facts and circumstances at that time, what, if any, action should be taken to address a fund's liquidity. We regard fees and gates as additional tools for boards to employ when necessary and appropriate to protect the fund and its shareholders. We note, however, that our amendments do not require funds to impose fees and gates when it is not in a fund's best interests.

Certain commenters cited operational challenges with respect to fees and gates and board quorum requirements, given that in a crisis a board's independent board members may not be readily available on short notice.[269] Commenters thus proposed that the quorum requirement be relaxed to require only the approval of a majority of independent directors available rather than of all independent directors.[270]

We have not made the requested change. The requirement that a majority of independent directors make a determination with respect to a fund matter is not unique to today's amendments. This requirement is widely used in the Investment Company Act and its rules, including a number of other exemptive rules.[271] As we have emphasized, independent directors are the "independent watchdogs" of a fund, and the Investment Company Act and its rules rely on them to protect investor interests.[272] A determination with respect to fees and gates by less than a majority of independent directors would not provide the level of independent oversight we

269 *See* Comment Letter of PFM Asset Management, LLC (Sept. 17, 2013) ("PFM Asset Mgmt. Comment Letter"); ABA Business Law Section Comment Letter; Comment Letter of Ropes & Gray LLP (Sept. 17, 2013) ("Ropes & Gray Comment Letter").

270 *See id.*

271 *See, e.g.*, rule 12b-1 and rule 15a-4.

272 *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 15, 1999).

are seeking in today's amendments, or in carrying out the purposes of the Investment Company Act. The decision to impose redemption restrictions on a fund's investors has significant ramifications for shareholders, and it is one that we believe should be entrusted only to a fund's board, including its independent directors. We note, however, that today's amendments do not require a best interests determination to be made at an in-person meeting and, thus, fund boards, including their independent directors, could hold meetings telephonically or through any other technological means by which all directors could be heard.[273]

Some commenters asserted that a fund's adviser or sponsor should have greater input regarding the imposition of a fee or gate.[274] For example, one commenter urged the Commission to recognize that "the primary role of the board is oversight" and acknowledge "both the ability and practical necessity of delegating day-to-day decision-making functions to a fund's officers and investment adviser/administrator pursuant to procedures approved by the board."[275] A few other commenters suggested that the Commission provide guidance that an adviser must provide the board certain information, guidance or a recommendation on whether to impose a fee or gate.[276]

We believe that a fund's board, and not its adviser, is the appropriate entity to determine

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273 The Commission has previously recognized that fund boards can hold meetings telephonically or through other technological means by which all directors can be heard simultaneously. *See, e.g.*, rule 15a-4 (permitting the approval of an interim advisory contract by a fund board at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting).

274 *See, e.g.*, NYC Bar Committee Comment Letter; Ropes & Gray Comment Letter; PFM Asset Mgmt. Comment Letter.

275 *See* Ropes & Gray Comment Letter.

276 *See* NYC Bar Committee Comment Letter; Comment Letter of the Independent Trustees of the Wilmington Funds (Sept. 17, 2013) ("Wilmington Trustees Comment Letter"); ABA Business Law Section Comment Letter.

(within the constructs of the rule) when and how a fund will impose liquidity fees and/or redemption gates. As discussed above, given the role of independent directors, a fund's board is in the best position to determine whether a fee or gate is in the best interests of the fund.[277] The Investment Company Act and its rules require many other fund fees and important matters to be approved by a fund's board, including a majority of independent directors, and we do not believe that liquidity fees and redemption gates should be treated differently.[278]

We note that although the final rule amendments contemplate that information from a fund's adviser will inform the board's determination involving a fee or gate,[279] we are not charging a fund's adviser with specific duties under today's amendments. As the board is the entity charged with overseeing the fund and determining whether a fee or gate is in the fund's best interests, we believe the board should dictate the information and analysis it needs from the adviser in order to inform its decision. Nonetheless, as a matter of course and in light of its fiduciary duty to the fund, an adviser should provide the board with necessary and relevant information to enable the board to make the determinations under the rule.

c. Size of Liquidity Fee

Today's amendments will permit a money market fund to impose a discretionary liquidity fee of up to 2% after its weekly liquid assets drop below 30% of its total assets. We are also

277 If a fund's adviser was charged with determining when to impose fees and gates, it could choose, irrespective of its fiduciary duty, to act in its own interests rather than the interests of fund shareholders by, for example, not imposing a fee or gate for fear that it would negatively impact the adviser's reputation. We note that the role of independent directors on a fund board should counteract any similar concerns on the part of interested directors.

278 *See, e.g.*, section 15(a)-(c); rule 12b-1 and rule 22c-2.

279 Because a fund's adviser is responsible for managing the portfolio, it is the entity that will have direct access to information on the fund's liquidity. As noted below, a fund's adviser should provide the board with all necessary and relevant information to make the determinations under the rule.

adopting a default liquidity fee of 1% that must be imposed if a fund drops below 10% weekly liquid assets, unless a fund's board determines not to impose such a fee, or to impose a lower or higher fee (not to exceed 2%) because it is in the best interests of the fund.[280] As proposed, the amendments would have required funds to impose a default liquidity fee of 2% after a fund's weekly liquid assets dropped below 15% of its total assets, although (as under our final amendments) fund boards could have determined not to impose the fee or to lower the fee.

We received a wide range of comments on the size and structure of the proposed liquidity fee.[281] A few commenters expressly supported a default fee of 2%.[282] One commenter expressed concern that a maximum 2% fee may be insufficient in times of crisis and urged the Commission to permit greater flexibility in setting an even higher fee if necessary.[283]

Other commenters explicitly argued against a default fee of 2%.[284] One commenter noted that 2% would be excessive "since it is far higher than the actual cost of liquidity paid by money market funds even at the height of the financial crisis."[285] Other commenters described a 2% fee as punitive[286] and arbitrary.[287] A number of commenters favored instead a default fee of 1%

280 *See* rule 2a-7(c)(2)(ii)(A).

281 We note that prior to issuing the proposal, commenters had suggested liquidity fee levels ranging from 1% to 3% could be effective. *See, e.g.*, Comment Letter of Vanguard (Jan. 15, 2013) (available in File No. FSOC–2012–0003) ("Vanguard FSOC Comment Letter") (recommending a fee of between 1 and 3%); BlackRock FSOC Comment Letter (recommending a standby liquidity fee of 1%); ICI Jan. 24 FSOC Comment Letter (recommending a 1% fee).

282 *See* J.P. Morgan Comment Letter; Ropes & Gray Comment Letter; Schwab Comment Letter; Wells Fargo Comment Letter.

283 *See* Ropes & Gray Comment Letter.

284 *See, e.g.*, Fidelity Trustees Comment Letter; Fidelity Comment Letter; Invesco Comment Letter; Comment Letter of Financial Services Roundtable (Sept. 17, 2013) ("Fin. Svcs. Roundtable Comment Letter").

285 *See* Invesco Comment Letter.

286 *See, e.g.*, Fidelity Trustees Comment Letter; Fidelity Comment Letter.

287 *See, e.g.*, Fin. Svcs. Roundtable Comment Letter.

while also allowing boards discretion to set a higher or lower fee.[288]

As suggested by commenters, the amendments we are adopting today will impose a default liquidity fee of 1%, that may be raised or lowered (or not imposed at all) by a fund's board. As discussed below, we are persuaded by commenters that 2% may be higher than most liquidity costs experienced when selling money market securities in a crisis, and may thus result in a penalty for redeeming shareholders over and above paying for the costs of their liquidity.[289] We are also persuaded by commenters that fund boards may be reluctant to impose a fee that is lower than the default liquidity fee for fear of being second-guessed – by the market, the Commission, or otherwise.[290] Accordingly, commenters supporting the 1% default fee have persuaded us that 1% is the correct default fee level.

Furthermore, analysis by Commission staff of liquidity costs of certain corporate bonds during the financial crisis further confirms that a reduced default fee of 1% is appropriate.[291] DERA staff estimated increases in transaction spreads for certain corporate bonds that occurred during the financial crisis.[292] Relative to transaction spreads observed during the pre-crisis period from January 2, 2008 to September 11, 2008, average transaction spreads increased by 54.1 bps

288 *See* Dreyfus Comment Letter; SIFMA Comment Letter; Northern Trust Comment Letter; BlackRock II Comment Letter; Fidelity Comment Letter.

289 *See, e.g.,* SIFMA Comment Letter ("Our members' consensus is that a redemption fee of 100 basis points will adequately compensate a money market fund for the costs of liquidating assets to honor redemptions in times of market stress, and avoid imposing a punitive charge on shareholders."); Fidelity Comment Letter ("We have examined the liquidation costs for our money market funds that sold securities during the period immediately following the bankruptcy of Lehman Brothers and determined that the highest liquidation cost was less than 50 basis points of face value. Recognizing that liquidation costs in a future market stress scenario may be greater, we think it is reasonable to set a liquidation fee at 100 basis points or one percent.").

290 *See* SIFMA Comment Letter.

291 *See* DERA Liquidity Fee Memo, *supra* note 111.

292 *See id.*

for Tier 1 eligible securities and by 104.4 bps for Tier 2 eligible securities during the period from September 12, 2008 to October 20, 2008. These estimates indicate that market stress increases the average cost of obtaining liquidity by an amount closer to 1% than 2%.[293]

We received a number of comments on DERA's analysis of liquidity costs.[294] Some commenters agreed that DERA's analysis supports a default liquidity fee of 1% and that 1% is the appropriate level for the fee.[295] Other commenters, however, took issue with DERA's methodology in examining liquidity costs and, one commenter suggested a default fee "as low as" 0.50% may be appropriate.[296]

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293 DERA obtained information on trades in Tier 1 and Tier 2 eligible securities, as defined in rule 2a-7 from TRACE (Trade Reporting and Compliance Engine) between January 2, 2008 through December 31, 2009, and formed a Tier 1 and a Tier 2 sample. TRACE provides transaction records for TRACE eligible securities that have a maturity of more than a year at issuance. Money market instruments, sovereign debt, and debt securities that have a maturity of less than a year at issuance are not reported in TRACE and hence DERA's sample differs from what money market funds hold. Nevertheless, the samples constructed from TRACE provide estimates for costs of liquidity during market stress since the selected securities have similar time-to-maturity and credit risk characteristics as those permitted under rule 2a-7. DERA included in the samples only trades of bonds with fewer than 120 days to maturity and with a trade size of at least $100,000. DERA classified bonds with credit ratings equal to AAA, AA+, AA, or AA- as Tier 1 eligible securities. The average days to maturity for Tier 1 securities in the sample is 67 days, which roughly reflects the 60-day weighted average maturity limit specified in rule 2a-7. Bonds with credit ratings equal to A+, A, or A- represent Tier 2 eligible securities. The average days to maturity for Tier 2 securities in the sample is 28 days, which is somewhat lower than the 45-day weighted average maturity limit required by rule 2a-7.

294 *See, e.g.,* Comment Letter of SIFMA (Apr. 23, 2014) ("SIFMA II Comment Letter"); Comment Letter of Dreyfus Corporation (Apr. 23, 2014) ("Dreyfus DERA Comment Letter"); Comment Letter of Invesco (Apr. 23, 2014) ("Invesco DERA Comment Letter").

295 *See* SIFMA II Comment Letter ("Data in the [DERA] Liquidity [Fee Memo] support that a lower default level [from the level proposed] will effectively compensate money market funds for the cost of liquidity during market turmoil.... A 100 basis point (1%) default level for the liquidity fee will more closely approximate the fund's cost of providing liquidity during a crisis period for a portfolio comprised largely of Tier 1 securities."); Dreyfus DERA Comment Letter ("We read [DERA's analysis] and interpret the average spread calculations contained [in the DERA Liquidity Fee Memo] to support a [default liquidity fee] of 1% and not 2%, as proposed."); Fidelity DERA Comment Letter (supporting a 1% liquidity fee and suggesting the empirical market data examined by DERA in its Liquidity Fee Memo is "critical in order for the SEC to determine the size of a liquidity fee," but noting that the methodology in DERA's analysis "overstates the estimates of absolute spreads.")

296 *See* Invesco DERA Comment Letter (suggesting concerns with the data and methodology used in DERA's analysis); BlackRock DERA Comment Letter (suggesting the methodology used in DERA's analysis was not "the appropriate methodology to measure the true cost of liquidity in MMFs," particularly the use of

As discussed in the Proposing Release, we have attempted to set the default liquidity fee high enough to deter shareholder redemptions so that funds can recoup costs of providing liquidity to redeeming shareholders in a crisis and so that the fund's liquidity is not depleted, but low enough to permit investors who wish to redeem despite the cost to receive their proceeds without bearing disproportionate costs.[297] Based on the comments we received on the proposal, we believe that a default fee of 1% strikes this balance. Although we have looked to the DERA study as confirming our decision based on comments we received supporting the 1% fee, we recognize commenters' critiques of the methodology used in the DERA analysis. We also note, however, that DERA acknowledged in its memorandum that its samples were not perfectly analogous to money market fund holdings, but that the samples nevertheless "provide estimates for costs of liquidity during market stress since the selected securities have similar time-to-maturity and credit risk characteristics as those permitted under Rule 2a-7."[298] Moreover, at least one commenter who took issue with DERA's samples agreed, based on its own independent

TRACE data); Comment Letter of Federated Investors Inc. (Liquidity Fee) (Apr. 23, 2014) ("Federated DERA II Comment Letter") (suggesting it generally agrees with DERA's methodology, but believes that a more appropriate default liquidity fee may be "as low as" 0.50% because "use of [TRACE] bond data as the basis for spread analysis led DERA to find significantly larger spreads than it would have found had it based its analysis on the short-term instruments in which MMFs actually invest"); *see also* Fidelity DERA Comment Letter (supporting a 1% default liquidity fee, but suggesting that the spreads cited in DERA's analysis are higher than those it has seen it its experience and that its independent analysis reflects average spreads between 0.12% and 0.57% during the week immediately following the Lehman Brothers bankruptcy).

297 *See, e.g.*, SIFMA Comment Letter; Fidelity Trustees Comment Letter; Fidelity Comment Letter (suggesting a 2% fee would be punitive); *see also supra* note 281.

298 *See* DERA Liquidity Fee Memo, *supra* note 111. Some commenters suggested we should analyze liquidity spreads in actual money market fund portfolios. *See* Federated DERA II Comment Letter; BlackRock DERA Comment Letter; Fidelity DERA Comment Letter. However, as one commenter acknowledged, this information is not publicly available, and we note that only one commenter on the DERA Liquidity Fee Memo provided specific information in this area. *See* BlackRock DERA Comment Letter; Fidelity DERA Comment Letter (providing specific information on spreads during the financial crisis and stating that a 1% default liquidity fee is appropriate). We believe one data point is not adequate for us to draw conclusions on liquidity costs in money market funds during the crisis.

analysis, that a default liquidity fee of 1% is appropriate.[299] Furthermore, because we recognize that establishing any fixed fee level may not precisely address the circumstances of a particular fund in a crisis, we are permitting (as in the proposal) fund boards to alter the level of the default liquidity fee and to tailor it to the specific circumstances of a fund. As amended, rule 2a-7 will permit fund boards to increase (up to 2%), decrease (to, for example, 0.50% as suggested by a commenter), or not impose the default 1% liquidity fee if it is in the best interests of the fund.

As proposed and supported by commenters,[300] we are limiting the maximum liquidity fee that may be imposed by a fund to 2%. As with the default fee, we seek to balance the need for liquidity costs to be allocated to redemptions with shareholders' need to redeem absent disproportionate costs. We also believe setting a limit on the level of a liquidity fee provides notice to investors about the extent to which a liquidity fee could impact their investment. In addition, as recognized by at least one commenter,[301] the staff has noted in the past that fees greater than 2% raise questions regarding whether a fund's securities remain "redeemable."[302] We note that if a fund continues to be under stress even with a 2% liquidity fee, the fund board may consider imposing a temporary redemption gate under amended rule 2a-7 or liquidating the fund pursuant to amended rule 22e-3.

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299 *See* Fidelity DERA Comment Letter.

300 *See, e.g.,* SIFMA Comment Letter.

301 *See* NYC Bar Assoc. Comment Letter.

302 Section 2(a)(32) defines the term "redeemable security" as a security that entitles the holder to receive approximately his proportionate share of the fund's net asset value. The Division of Investment Management informally took the position that a fund may impose a redemption fee of up to 2% to cover the administrative costs associated with redemption, "but if that charge should exceed 2 percent, its shares may not be considered redeemable and it may not be able to hold itself out as a mutual fund." *See* John P. Reilly & Associates, SEC Staff No-Action Letter (July 12, 1979). This position is currently reflected in rule 23c-3(b)(1), which permits a maximum 2% repurchase fee for interval funds and rule 22c-2(a)(1)(i),which similarly permits a maximum 2% redemption fee to deter frequent trading in mutual funds.

As recognized in the Proposing Release, there are a number of factors a board may want to consider in determining the level of a liquidity fee. These may include, but are not limited to: changes in spreads for portfolio securities (whether based on actual sales, dealer quotes, pricing vendor mark-to-model or matrix pricing, or otherwise); the maturity of the fund's portfolio securities; changes in the liquidity profile of the fund in response to redemptions and expectations regarding that profile in the immediate future; whether the fund and its intermediaries are capable of rapidly putting in place a fee of a different amount from a previously set liquidity fee or the default liquidity fee; if the fund is a floating NAV fund, the extent to which liquidity costs are already built into the NAV of the fund; and the fund's experience, if any, with the imposition of fees in the past. We note that fund boards should not consider our 1% default liquidity fee as creating the presumption that a liquidity fee should be 1%. If a fund board believes based on market liquidity costs at the time or otherwise that a liquidity fee is more appropriately set at a lower or higher (up to 2%) level, it should consider doing so. Once a liquidity fee has been imposed, the fund's board would likely need to monitor the imposition of such fee, including the size of the fee, and whether it continues to be in the best interests of the fund.[303]

Other commenters argued for even more flexible approaches and/or entirely different standards for setting a fee.[304] For example, a commenter argued against having any default fee and instead supported allowing the board to tailor the fee to encompass the cost of liquidity to

303 A board may change the level of a liquidity fee at any time if it determines it is in the best interests of the fund to do so. Similarly, once a gate is imposed, the fund's board would likely monitor the imposition of the gate and whether it remains in the best interests of the fund to continue imposing the gate.

304 *See, e.g.,* Fin. Svcs. Roundtable Comment Letter; Schwab Comment Letter; Santoro Comment Letter; Invesco Comment Letter.

the fund.[305] Different commenters similarly argued that liquidity fees should be carefully calibrated in relation to a fund's actual cost of liquidity.[306] A commenter noted this calibration could be achieved by, rather than setting a fixed fee in advance, delaying redemptions for up to seven days to allow the fund to determine the size of the fee based on actual transaction costs incurred on each day's redemptions.[307] Finally, a commenter proposed a flexible redemption fee whereby redemptions would occur at basis point NAV (*i.e.*, NAV to the fourth decimal place) plus 1%.[308]

As discussed above, the amendments we are adopting today incorporate substantial flexibility for a fund board to determine when and how it imposes liquidity fees. We believe that including in the amended rule a 1% default fee that may be modified by the board is the best means of directing fund boards to a liquidity fee that may be appropriate in stressed market conditions, while at the same time providing flexibility to boards to lower or raise the liquidity fee if a board determines that a different fee would better and more fairly allocate liquidity costs to redeeming shareholders. We would encourage a fund board, if practicable given any timing concerns, to consider the actual cost of providing liquidity when determining if the default liquidity fee is in the fund's best interests. In addition, we note that under today's amendments, a fund board also could, as suggested by a commenter, determine that the default fee is not in the best interests of the fund and instead gate the fund for a period of time, possibly later imposing a liquidity fee.

305 *See* Fin. Svcs. Roundtable Comment Letter.

306 *See* Invesco Comment Letter; Ropes & Gray Comment Letter.

307 *See* Ropes & Gray Comment Letter.

308 *See* Capital Advisors Comment Letter.

Furthermore, we have determined not to explicitly tie the default liquidity fee to market indicators. As discussed in the Proposing Release, we believe there are certain drawbacks to such a "market-sized" liquidity fee.[309] First, it may be difficult for money market funds to rapidly determine precise liquidity costs in times of stress when the short-term financing markets may generally be illiquid.[310] Similarly, the additional burdens associated with computing a market-sized liquidity fee could make it more difficult for funds and their boards to act quickly and proactively to stem heavy redemptions. Second, a market-sized liquidity fee does not signal in advance the size of the liquidity fee shareholders may have to pay if the fund's liquidity is significantly stressed.[311] This lack of transparency may hinder shareholders' ability to make well-informed investment decisions because investors may invest funds without realizing the extent of the costs they could incur on their redemptions.

Finally, commenters proposed various potential exemptions from the default liquidity fee. For example, a commenter suggested an exemption for all shareholders to redeem up to $1

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309 *See* Proposing Release, *supra* note 25, at 183; *see also* HSBC FSOC Comment Letter (suggesting that the amount of the liquidity fee charged could be based on the anticipated change in the market-based NAV of the fund's portfolio from the redemption, assuming a horizontal slice of the fund's portfolio was sold to meet the redemption request).

310 Our staff gave no-action assurances to money market funds relating to valuation during the financial crisis because determining pricing in the then-illiquid markets was so difficult. *See* Investment Company Institute, SEC Staff No-Action Letter (Oct. 10, 2008) (not recommending enforcement action through January 12, 2009, if money market funds used amortized cost to shadow price portfolio securities with maturities of 60 days or less in accordance with Commission interpretive guidance and noting: "You state that under current market conditions, the shadow pricing provisions of rule 2a-7 are not working as intended. You believe that the markets for short-term securities, including commercial paper, may not necessarily result in discovery of prices that reflect the fair value of securities the issuers of which are reasonably likely to be in a position to pay upon maturity. You further assert that pricing vendors customarily used by money market funds are at times not able to provide meaningful prices because inputs used to derive those prices have become less reliable indicators of price.").

311 A liquidity fee based on market indicators would not provide notice to shareholders of the potential level of a liquidity fee like our maximum 2% fee and default fee level of 1% provide.

million for incidental expenditures without a fee.[312] Other commenters argued that a fee should not be imposed on newly purchased shares.[313] For several independent reasons, we do not currently believe that there should be exemptions to the default liquidity fee. First, because the circumstances under which liquidity becomes expensive historically have been infrequent, we believe the imposition of fees and gates will also be infrequent. As long as funds' weekly liquid assets are above the regulatory threshold (*i.e.* 30%), fund shareholders should continue to enjoy unfettered liquidity for money market fund shares.[314] The likely limited and infrequent use of liquidity fees leads us to believe exemptions are generally unnecessary. Second, liquidity fees are meant to impose at least some of the cost of liquidity on those investors who are seeking liquidity by redeeming their shares. Allowing exemptions to the default liquidity fee would run counter to this purpose and permit some investors to avoid bearing at least some of their own costs of obtaining liquidity and could serve to further harm the liquidity of the fund, potentially requiring the imposition of a liquidity fee for longer than would otherwise be necessary. Third, as suggested by commenters and discussed in section III.C.7.a below, exemptions to the default liquidity fee would increase the cost and complexity of the amendments for funds and intermediaries because funds would have to develop the systems and policies to track, for example, the amount of each shareholder's redemption, and could facilitate gaming on the part of investors because investors could attempt to fit their redemptions within the scope of an

312 *See* Capital Advisors Comment Letter.

313 *See* ABA Business Law Section Comment Letter; Wilmington Trustees Comment Letter; Federated V Comment Letter.

314 *See* Proposing Release, *supra* note 25, at n.342.

exemption.[315]

d. Duration of Fees and Gates

We are adopting, as proposed, a requirement that any fee or gate be lifted automatically once the fund's weekly liquid assets have risen to or above 30% of the fund's total assets. We are also adopting, with certain modifications from the proposal as discussed below, a requirement that a money market fund must lift any gate it imposes within 10 business days and that a fund cannot impose a gate for more than 10 business days in any 90-day period. As proposed, the amendments would have allowed funds to impose a gate for up to 30 days in any 90-day period.

Several commenters noted positive aspects of the Commission's proposed duration for fees and gates.[316] Some commenters, however, suggested that the duration of liquidity fees, like the duration of redemption gates, should be limited to a number of days.[317] We continue to believe that the appropriate duration limit on a liquidity fee is the point at which a fund's assets

315 *See, e.g.,* Federated V Comment Letter ("Any attempt to create exceptions, such as allowing redemptions free of any liquidity fee up to a set dollar amount or percentage of the shareholder's account balance, would add significant operational hurdles to the proposed reform. In order to be applied equitably, prime [money market funds] would have to take steps to assure that intermediaries were implementing the exceptions on a consistent basis."); Fidelity Comment Letter (urging the Commission not to adopt partial gates, which like an exception to a liquidity fee, would, for example, except a certain amount of redemptions (*e.g.*, up to $250,000 per shareholder) from a gate that has been imposed). The commenter stated "that the challenges and costs associated with [partial gates] outweigh the benefits. The systems enhancements necessary to track holdings for purposes of determining each shareholder's redemption limit would be more complicated, cumbersome, and costly than the changes required to implement the full gate, [and] that this complicated structure lends itself to arbitrary or inconsistent application across the industry and potential inequitable treatment among shareholders." *Id.*

316 *See, e.g.,* HSBC Comment Letter; Dreyfus Comment Letter; SIFMA Comment Letter; UBS Comment Letter.

317 *See* BlackRock II Comment Letter ("We would also recommend that a MMF not be open with a liquidity fee for more than 30 days."); Federated V Comment Letter (suggesting that liquidity fees should be subject to the same duration limits as redemption gates and proposing a limit of 10 calendar days); J.P. Morgan Comment Letter; *see also* UBS Comment Letter (noting that "there should be a maximum time period during which the liquidity fee … could be imposed").

rise to or above 30% weekly liquid assets. Thirty percent weekly liquid assets is the minimum required under rule 2a-7 and thus a fee (or gate) would appear to no longer be justified once a fund's level of weekly liquid assets has risen to this level. If we were to limit the imposition of liquidity fees to a number of days, a fund might have to remove a liquidity fee while it is still under stress and thus it would not gain the full benefits of imposing the fee.[318] Additionally, if a fund was required to remove the fee while it was still under stress, it may have to re-impose the fee shortly thereafter, which could cause investor confusion.[319] We note that a fund's board can always determine that it is in the best interests of the fund to lift a fee before the fund's level of weekly liquid assets is restored to 30% of its total assets.

We also received a number of comments on the duration of redemption gates.[320] For example, some commenters described the maximum 30-day term for gating as reasonable,[321] including a commenter that noted it would not be in favor of a shorter time period.[322] Another commenter stated its support for the Commission's proposed 30-day time limit for redemption

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318 We note that, unlike a redemption gate, a liquidity fee does not prohibit a shareholder from accessing its investment; this distinction, in our view, justifies imposing a limited duration on the imposition of a gate while not doing so for the imposition of fees. We also note that, once a fund's weekly liquid assets drop below the regulatory minimum (30%), it is limited to purchasing only weekly liquid assets, which should increase the fund's liquidity and potentially bring it back above the weekly liquid asset threshold. *See* rule 2a-7(d)(4)(iii).

319 As discussed in the Proposing Release, we considered whether a fee or gate should be lifted automatically before a fund's weekly liquid assets were completely restored to their required minimum – for example, after they had risen to 25%. However, we believe that such a requirement would be inappropriate for the same reasons we are not limiting the length of time the fee is imposed.

320 *See, e.g.,* UBS Comment Letter (supporting a maximum time period that would require a gated fund to reopen or liquidate thereafter).

321 *See, e.g.,* Dreyfus Comment Letter; Page Comment Letter.

322 *See* Dreyfus Comment Letter (noting that shortening the maximum gating period might not be enough time for a fund's liquidity levels to adequately recover).

gates.[323] In addition, an industry group commented that although its members had varying views, some stressed the importance of the maximum 30-day period to allow the fund adequate time to replenish its liquidity as securities mature.[324]

On the other hand, in response to our request for comment on the appropriate duration of redemption gates, including our request for comment on a 10-day maximum gating period, some commenters raised concerns with the proposed 30-day maximum gating period.[325] For example, one commenter noted that "denying investors access to their cash for more than a brief period" would "create serious hardships."[326] This commenter expressed doubt that it would take boards "much more than a week to resolve what course of action would best serve the interest of their shareholders" and suggested an alternate maximum gating period of up to 10 calendar days.[327] A second commenter added that the potential total loss of liquidity for up to 30 days could further exacerbate pre-emptive runs and even be destabilizing to the short-term liquidity markets, and suggested an alternative maximum gating period of up to 10 calendar days.[328] Additionally, some members of an industry group suggested that gating for a shorter period of time would be more consistent with investors' liquidity needs and the requirements of the Investment Company

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323 *See* HSBC Comment Letter.

324 *See* SIFMA Comment Letter.

325 *See, e.g.*, SIFMA Comment Letter; J.P. Morgan Comment Letter; Fla. CFO Comment Letter; Federated V Comment Letter.

326 *See* Federated II Comment Letter; Federated V Comment Letter.

327 *See* Federated II Comment Letter ("Federated had previously proposed limiting any suspension of redemptions to five or ten business days. Alternative 2, on the other hand, would set the limit in terms of calendar days. Federated therefore recommends limiting a temporary suspension of redemptions to not more than ten calendar days."); Federated V Comment Letter; Federated X Comment Letter; *see also* Federated Funds Trustees Comment Letter; J.P. Morgan Comment Letter (suggesting a 10-day gating period).

328 *See* J.P. Morgan Comment Letter.

Act.[329]

We have carefully considered the comments we received, both on the duration of gates and on the possibility of pre-emptive runs as a result of potential gates, and have been persuaded that gates should be limited to a shorter time period of up to 10 business days.[330] As discussed in the Proposing Release and reiterated by commenters,[331] we recognize the strong preference embodied in the Investment Company Act for the redeemability of open-end investment company shares.[332] Additionally, as was echoed by a number of commenters,[333] we understand that investors use money market funds for cash management and a lack of access to their investment for a long period of time can impose substantial costs and hardships. Indeed, many shareholders in the Reserve Primary Fund informed us about these costs and hardships during that fund's lengthy liquidation.[334] As discussed above, it remains one of our goals to preserve the

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329 *See* SIFMA Comment Letter.

330 In a change from the proposal, the maximum gating period in the final amendments uses business days rather than calendar days to better reflect typical fund operations and to mitigate potential gaming of the application of gates during weekends or periods during which a fund might not already typically accept redemption requests. If a fund imposes a gate, it is not required to impose the gate for 10 business days. Rather, a fund can lift a gate before 10 business days have passed and we would expect a board would promptly do so if it determines that it is in the best interests of the fund. We note that a money market fund board would likely meet regularly during any period in which a redemption gate is in place. *See supra* note 303. Additionally, a fund's board may also consider permanently suspending redemptions in preparation for fund liquidation under rule 22e-3 if the fund approaches the 10 business day gating limit.

331 *See, e.g.,* SIFMA Comment Letter.

332 *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 291-292 (1940) (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC); *see also* section 22(e) (limiting delays in payments on redemptions to up to seven days).

333 *See, e.g.,* Federated II Comment Letter; Federated V Comment Letter; SIFMA Comment Letter.

334 *See* Kevin McCoy, *Primary Fund Shareholders Put in a Bind,* USA Today, Nov. 11, 2008, *available at* http://usatoday30.usatoday.com/money/perfi/funds/2008-11-11-market-fund-side_N.htm (discussing hardships faced by Reserve Primary Fund shareholders due to having their shareholdings frozen, including a small business owner who almost was unable to launch a new business, and noting that "Ameriprise has used 'hundreds of millions of dollars' of its own liquidity for temporary loans to clients who face financial hardships while they await final repayments from the Primary Fund"); John G. Taft, STEWARDSHIP:

benefits of money market funds for investors. Accordingly, upon consideration of the comments received, we have modified the final rules to limit the redeemability of money market fund shares for a shorter period of time.[335]

Some commenters suggested that the longer a potential redemption gate may be imposed, the greater the possibility that investors may try to pre-emptively redeem from a fund before the gate is in place.[336] We recognize this concern and believe that if gates are limited to 10 business days, investors may be less inclined to try to redeem before a gate is imposed because 10 business days is a relatively short period of time and after that time investors will have access to their investment.[337]

We also believe that by limiting gates to 10 business days, investors may be better able to account for the possibility of redemption gates when determining their investment allocations and cash management policies. For example, an employer may determine that money market funds continue to be a viable cash management tool because even if a fund imposes a gate, the employer could potentially still meet its payroll obligations, depending on its payroll cycle.

LESSONS LEARNED FROM THE LOST CULTURE OF WALL STREET (2012), at 2 ("Now that the Reserve Primary Fund had suspended redemptions of Fund shares for cash, our clients had no access to their cash. This meant, in many cases, that they had no way to settle pending securities purchases and therefore no way to trade their portfolios at a time of historic market volatility. No way to make minimum required distributions from retirement plans. No way to pay property taxes. No way to pay college tuition. It meant bounced checks and, for retirees, interruption of the cash flow distributions they were counting on to pay their day-to-day living expenses.").

335 We recognize that rule 22e-3 does not limit gates to a short period of time, but under that rule, a gate is permanent and a fund must liquidate thereafter. *See* rule 22e-3.

336 *See, e.g.,* J.P. Morgan Comment Letter; Federated XI Comment Letter.

337 *See, e.g.,* Federated V Comment Letter ("[A 10-day maximum gating period] would also be consistent with the comments of some of the investors who indicated to Federated that they probably could not go more than two weeks without access to the cash held in their [money market fund].") In addition, we note that 10 business days is not significantly longer than funds are statutorily permitted to delay payment on redemptions. *See* section 22(e).

Similarly, a retail investor may determine to invest in a money market fund for cash management purposes because a money market fund's potential for yield as compared to the interest on a savings or checking account outweighs the possibility of a money market fund imposing a gate and delaying payment of the investor's bills for up to 10 business days.

While we believe temporary gates should be limited to a short period of time, we also recognize that gates may be the most effective, and probably only, way for a fund to stop a run for the duration of the gating period. As one commenter stated, "[s]uspending redemptions would allow a [b]oard to deal with large-scale redemptions directly, by effectively calling a 'time out' until the [b]oard can decide how to deal with the circumstances prompting the redemptions."[338] Accordingly, we believe gates, even those that are limited to up to 10 business days, will be a valuable tool for funds to limit heavy redemptions in times of stressed liquidity.[339]

We also recognize, as suggested by some commenters,[340] that temporary gates should provide a period of time for funds to gain internal liquidity. In this regard, we note that weekly liquid assets generally consist of government securities, cash, and assets that will mature in five business days,[341] and that once a fund has dropped below 30% weekly liquid assets (the required regulatory minimum, and the threshold for the imposition of gates), the fund can purchase only

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338 *See* Federated V Comment Letter.

339 As discussed in *supra* note 148, as necessary, the Commission also has previously granted orders allowing funds to suspend redemptions to address exigent circumstances. *See, e.g.*, In the Matter of: Centurion Growth Fund, Inc., Investment Company Act Release Nos. 20204 (Apr. 7, 1994) (notice) and 20210 (Apr. 11, 1994) (order); In the Matter of Suspension of Redemption of Open-End Investment Company Shares Because of the Current Weather Emergency, Investment Company Act Release No. 10113 (Feb. 7, 1978).

340 *See, e.g.,* SIFMA Comment Letter; Dreyfus Comment Letter.

341 *See* rule 2a-7(a)(34).

weekly liquid assets.[342] Accordingly, because the securities a fund may purchase once it has imposed a gate will mature, in large part, in five business days, we believe a limit of 10 business days for the imposition of a gate should provide a fund with an adequate period of time in which to generate internal liquidity.[343]

We further recognize that 10 business days is not significantly longer than the seven days funds are already permitted to delay payment of redemption proceeds under section 22(e) of the Investment Company Act. We note, however, that while section 22(e) allows funds to delay payment on redemption requests, it does not prevent shareholders from redeeming shares. Even if a fund delays payment on redemptions pursuant to section 22(e), redemptions can continue to mount at the fund.[344] Unlike payment delays under section 22(e), the temporary gates we are adopting today will allow a fund a cooling off period during which redemption pressures do not continue to mount while the fund builds additional liquidity, and the fund's board can continue to evaluate the best path forward. Additionally, temporary gates may also provide a cooling off period for shareholders during which they may gather more information about a fund, allowing them to make more well-informed investment decisions after a gate is lifted.

Finally, one commenter asked the Commission to clarify that the time limit for redemption gates may "occur in multiple separate periods within any ninety-day period (as well

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342 *See* rule 2a-7(d)(4)(iii).

343 *See* J.P. Morgan Comment Letter ("Ten (10) calendar days should provide [money market funds] an opportunity to rebuild significant amounts of liquidity since the 2010 amendments to Rule 2a-7 require [money market funds] to invest at least 30% of their portfolios in assets that can provide weekly liquidity.").

344 For example, if on day one, fifty shareholders place redemptions requests with a fund, there is nothing to stop another fifty shareholders from placing redemption requests on day two. The fund's liquidity may continue to be strained because it is required to pay out redemption proceeds to all fifty shareholders from day one within seven days (and the next day, to all fifty shareholders from day two) and it must do so at day one's NAV (and the next day, at day two's NAV).

as consecutively), and if so, whether the ninety-day period is a rolling period which is recalculated on a daily basis."[345] As indicated in the Proposing Release, the intent of the 90-day limit on redemption gates is to ensure that funds do not circumvent the time limit on redemption gates[346] – for example, by reopening on the 9th business day for one business day before re-imposing a gate for potentially another 10 business day period. Accordingly, when determining whether a fund has been gated for more than 10 business days in a 90-day period, the fund should account for any multiple separate gating periods and assess compliance with the 90-day limit on rolling basis, calculated daily.

3. *Exemptions to Permit Fees and Gates*

The Commission is adopting, as proposed, exemptions from various provisions of the Investment Company Act to permit a fund to institute liquidity fees and redemption gates.[347] In the absence of an exemption, imposing gates could violate section 22(e) of the Act, which generally prohibits a mutual fund from suspending the right of redemption or postponing the payment of redemption proceeds for more than seven days, and imposing liquidity fees could violate rule 22c-1, which (together with section 22(c) and other provisions of the Act) requires that each redeeming shareholder receive his or her pro rata portion of the fund's net assets. The Commission is exercising its authority under section 6(c) of the Act to provide exemptions from these and related provisions of the Act to permit a money market fund to institute liquidity fees

345 *See* Comment Letter of Stradley Ronon Stevens & Young, LLP (Sept. 17, 2013) ("Stradley Ronon Comment Letter").

346 *See* Proposing Release, *supra* note 25, at 189.

347 *See* rule 2a-7(c)(2).

and redemption gates notwithstanding these restrictions.[348] As discussed in the Proposing Release and in more detail below, we believe that such exemptions do not implicate the concerns that Congress intended to address in enacting these provisions, and thus they are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

We do not believe that the temporary gates we are allowing in today's amendments will conflict with the purposes underlying section 22(e), which was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees.[349] Rather, under today's amendments, the board of a money market fund can impose gates to benefit the fund and its shareholders by making the fund better able to protect against redemption activity that would harm remaining shareholders, and to allow time for any market distress to subside and liquidity to build organically.

In addition, gates will be limited in that they can be imposed only for limited periods of time and only when a fund's weekly liquid assets are stressed. This aspect of gates, therefore, is akin to rule 22e-3, which also provides an exemption from section 22(e) to permit money market fund boards to suspend redemptions of fund shares to protect the fund and its shareholders from

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348 Section 6(c). To clarify the application of liquidity fees and redemption gates to variable contracts, we are also amending rule 2a-7 to provide that, notwithstanding section 27(i) of the Act, a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee or redemption gate to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund. *See* rule 2a-7(c)(2)(iv). Section 27(i)(2)(A) makes it unlawful for any registered separate account funding variable insurance contracts or the sponsoring insurance company of such account to sell a variable contract that is not a "redeemable security."

349 *See* 2009 Proposing Release, *supra* note 66, at n.281 and accompanying text.

the harmful effects of a run on the fund, and to minimize the potential for disruption to the securities markets.[350]

We are also providing exemptions from rule 22c-1 to permit a money market fund to impose liquidity fees because such fees can benefit the fund and its shareholders by providing a more systematic and equitable allocation of liquidity costs.[351] In addition, based on the level of the liquidity fee imposed, a fee may secondarily benefit a fund by helping to repair its market-based NAV.

We are permitting money market funds to impose fees and gates in limited situations because they may provide substantial benefits to money market funds, the short-term financing markets for issuers, and the financial system, as discussed above. However, we are adopting limitations on when and for how long money market funds can impose these restrictions because we recognize that fees and gates may impose hardships on investors who rely on their ability to freely redeem shares (or to redeem shares without paying a fee).[352] We did not receive comments suggesting changes to the proposed exemptions and, thus, we are adopting them as proposed.[353]

4. *Amendments to Rule 22e-3*

Currently, rule 22e-3 allows a money market fund to permanently suspend redemptions and liquidate if the fund's board determines that the deviation between the fund's amortized cost

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350 *See* 2010 Adopting Release, *supra* note 17, at text following n.379.

351 *See* rule 2a-7(c)(2) (providing that, notwithstanding rule 22c-1, among other provisions, a money market fund may impose a liquidity fee under the circumstances specified in the rule).

352 *See* rule 2a-7(c)(2)(i) and (ii); *cf.* 2010 Adopting Release, *supra* note 17, at text following n.379 ("Because the suspension of redemptions may impose hardships on investors who rely on their ability to redeem shares, the conditions of [rule 22e-3] limit the fund's ability to suspend redemptions to circumstances that present a significant risk of a run on the fund and potential harm to shareholders.")

353 *But see* NYC Bar Committee Comment Letter (discussing section 22(e) and the Commission's authority to allow gates under that section). As discussed above, we are adopting the proposed amendments to rule 22e-3 pursuant to section 6(c).

price per share and its market-based NAV per share may result in material dilution or unfair results to investors or existing shareholders.[354] Today, we are amending rule 22e-3 to also permit (but not require) the permanent suspension of redemptions and liquidation of a money market fund if the fund's level of weekly liquid assets falls below 10% of its total assets.[355] As proposed, the amendments would have allowed for permanent suspension of redemptions and liquidation after a money market fund's level of weekly liquid assets fell below 15%.[356]

Commenters generally supported our proposed retention of rule 22e-3[357] and did not suggest changes to our proposed amendments. We are making a conforming change in the proposed weekly liquid asset threshold below which a fund may permanently gate and liquidate, however, in order to correspond to other changes in the proposal related to weekly liquid asset thresholds for fees and gates. For the reasons discussed above, we have determined to raise the initial threshold below which a fund board may impose fees and gates, but lower the threshold for imposition of a default liquidity fee. Due to the absolute and significant nature of a permanent suspension of redemptions and liquidation, we believe the lower default fee threshold would also be the appropriate threshold for board action under rule 22e-3.[358] A permanent suspension of redemptions could be considered more draconian because there is no prospect that

354 *See* rule 22e-3(a)(1).

355 *See id.*

356 The proposed weekly liquid asset threshold corresponded with the proposed threshold for the imposition of a default fee and/or redemption gates.

357 *See, e.g.,* ICI Comment Letter (supporting the retention of rule 22e-3); Stradley Ronon Comment Letter, (discussing rule 22e-3 and master/feeder funds); Dreyfus Comment Letter; *but see* Peirce & Green Comment Letter (suggesting that the requirement in rule 22e-3 that "a fund's board have made an irrevocable decision to liquidate the fund … unnecessarily dissuades boards from using redemption suspensions").

358 *Cf.* Proposing Release *supra* note 25, at 195-196.

the fund will re-open – instead the fund will simply liquidate and return money to shareholders. Therefore, we do not believe that the 30% weekly liquid asset threshold for discretionary fees and gates, which is designed to provide boards with significant flexibility to restore a fund's liquidity in times of stress, would be an appropriate threshold under which fund boards could permanently close a fund.

Amended rule 22e-3 will allow all money market funds, not just those that maintain a stable NAV as currently contemplated by rule 22e-3, to rely on the rule when the fund's liquidity is significantly stressed. A money market fund whose weekly liquid assets have fallen below 10% of its total assets (whether that fund has previously imposed a fee or gate, or not) may rely on the rule to permanently suspend redemptions and liquidate.[359] Under amended rule 22e-3, stable value funds also will continue to be able to suspend redemptions and liquidate if the board determines that the deviation between its amortized cost price per share and its market-based NAV per share may result in material dilution or other unfair results to investors or existing shareholders.[360] Thus, a stable value money market fund that suffers a default will still be able to suspend redemptions and liquidate before a credit loss leads to redemptions and a fall in its weekly liquid assets.

5. *Operational Considerations Relating to Fees and Gates*

a. Operational Costs

As discussed in the Proposing Release, we recognize that money market funds and others in the distribution chain (depending on the structure) will incur some operational costs in

359 We note that a money market fund would not have to impose a fee or a gate before relying on rule 22e-3. For example, if the fund drops below the 10% weekly liquid asset threshold, its board may determine that a liquidity fee is not in the best interests of the fund and instead decide to suspend redemptions and liquidate.

360 *See* rule 22e-3(a)(1).

establishing or modifying systems to administer a liquidity fee or temporary gate.[361] These costs may relate to the development of procedures and controls for the imposition of liquidity fees or updating systems for confirmations and account statements to reflect the deduction of a liquidity fee from redemption proceeds.[362] Additionally, these costs may relate to the establishment of new or modified systems or procedures that will allow funds to administer temporary gates.[363] We also recognize that money market funds may incur costs in connection with board meetings held to determine if fees and/or gates are in the best interests of a fund.

In addition, operational costs may be incurred by, or spread among, a fund's transfer agents, sub-transfer agents, recordkeepers, accountants, portfolio accounting departments, and custodian.[364] Funds also may seek to modify contracts with financial intermediaries or seek certifications from intermediaries that they will apply a liquidity fee on underlying investors' redemptions. Money market fund shareholders also may be required to modify their own systems to prepare for possible future liquidity fees, or to manage gates, although we expect that only some shareholders will be required to make these changes.[365]

A number of commenters suggested that the operational costs and burdens of

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361 Some commenters also suggested that affected money market funds may have to examine whether shareholder approval is required to amend organizational documents, investment objectives or policies. *See, e.g.,* Ropes & Gray Comment Letter; Fidelity Comment Letter.

362 *See, e.g.,* ICI Comment Letter ("[T]he nature of the liquidity fee would entail changes to support a separate fee type, appropriate tax treatment, and investor reporting, including transaction confirmation statements that reference fees charged and applicable tax information for customers.").

363 *See* ICI Comment Letter ("Temporary gating also would require fund transfer agent and intermediary system providers to ensure that their systems can suppress redemption activity while supporting all other transaction types.").

364 *See* ICI Comment Letter; *see also* Comment Letter of State Street Corporation (Sept. 17, 2013) ("State Street Comment Letter") (suggesting that transfer agents and intermediaries will need to modify their systems to accommodate fees and gates).

365 Many shareholders use common third party-created systems and thus would not each need to modify their systems.

implementing and administrating fees and gates would be manageable.[366] Some commenters noted that liquidity fees and redemption gates would be more practicable, and less costly and burdensome to implement and maintain than the other proposed reform alternative (floating NAV).[367] Another commenter added that the systems modifications for fees and gates, especially absent a requirement to net each shareholder's redemptions each day, would be "far less costly and onerous" than the operational challenges posed by the floating NAV reform alternative.[368] One commenter estimated that implementing fees and gates would require only "minimal enhancements" to its core custody/fund accounting systems at "minimal costs."[369] This commenter further noted that most systems enhancements would likely be required with respect to the systems of transfer agents and intermediaries, although their systems would likely already include "basic functionality to accommodate liquidity fees and gates."[370] Similarly, another commenter noted that the operational issues of fees and gates could be solved if the industry and all its stakeholders were given sufficient implementation time.[371] This commenter cited its ongoing efforts to implement liquidity fees at its Dublin-domiciled money market fund complex

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366 *See, e.g.,* ICI Comment Letter; HSBC Comment Letter, Federated X Comment Letter; Invesco Comment Letter.

367 *See, e.g.,* SunTrust Comment Letter; Federated X Comment Letter; Angel Comment Letter. One commenter argued that for investors, intermediaries and fund complexes alike, the estimated costs of fees and gates "are dramatically lower" than under the proposed floating NAV alternative. *See* Federated X Comment Letter.

368 *See, e.g.,* ICI Comment Letter ("System modifications for liquidity fees and gates, especially absent the net redemption requirement, are far less onerous and costly, however, than the extensive programming and other system changes necessary to implement a floating NAV as contemplated by the SEC's proposal.")

369 *See* State Street Comment Letter.

370 *See id.*

371 *See* HSBC Comment Letter. The commenter also noted that a variable liquidity fee, if available in a timely manner, should not create any operational impediments.

as an example that the operational challenges and costs would not be prohibitive.[372]

Conversely, a number of commenters expressed concern over the operational burdens and related administrative costs with the fees and gates requirements.[373] Some commenters argued that the implementation and administration of fees and gates would present significant operational challenges, in particular with respect to omnibus accounts, sweep accounts, intermediaries and the investors that use them.[374] One commenter argued that, to reduce operational burdens, a liquidity fee should be applied to each redemption separately – rather than net redemptions – in an affected money market fund.[375] This commenter also expressed concern that intermediaries would not know whether their sweeps would be subject to a liquidity fee or temporary gate until after the daily investment is made.[376] For example, the possibility of a liquidity fee would require intermediaries to develop trading systems to ensure that for each transaction "the investor has sufficient funds to cover the trade itself plus the possibility of a liquidity fee."[377] Commenters also suggested that a fee or gate could not be uniformly applied within omnibus accounts,[378] and certain commenters expressed concern over transparency with

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372 *See id.*

373 *See, e.g.,* Comment Letter of TIAA-CREF (Sept. 17, 2013) ("TIAA-CREF Comment Letter"); J.P. Morgan Comment Letter; Fin. Svcs. Roundtable Comment Letter; Goldman Sachs Comment Letter.

374 *See, e.g.,* SunTrust Comment Letter; Comment Letter of Coalition of Mutual Fund Investors (Sept. 17, 2013) ("Coal. of Mutual Fund Invs. Comment Letter"); Schwab Comment Letter.

375 *See* ICI Comment Letter (expressing concern that funds, record keepers and intermediaries would have to develop complex operational systems that could apply a fee with respect to a shareholder's net redemptions for a particular day and tracking the "shareholder of record" to whom such a fee would apply).

376 *See id.*

377 *See* Fin. Svcs. Roundtable Comment Letter; *see also* Fin. Info. Forum Comment Letter (suggesting liquidity fees could cause investors [to] over-trade their account by settling an amount greater than their balance due to a liquidity fee not known at the time of order entry).

378 *See* Coal. of Mutual Fund Invs. Comment Letter; SunTrust Comment Letter.

respect to fees and gates for shareholders investing through omnibus accounts.[379]

We understand that the implementation of fees and gates (as with any new regulatory requirement) is not without its operational challenges; however, we have sought to minimize those challenges in the amendments we are adopting today. Based on the comments discussed above, we now recognize that a liquidity fee could either be applied to each redemption separately or on a net basis. As indicated by the relevant commenter, our proposal contemplated net redemptions as an investor-friendly manner of applying a liquidity fee.[380] However, in light of the comments, we are persuaded that such an approach may be too operationally difficult and costly for funds to apply and, thus, we are not requiring funds to apply a liquidity fee on a net basis.[381]

We also recognize commenters' concerns regarding the application of fees and gates in the context of sweep accounts. We note that during normal market conditions, fees and gates should not impact sweep accounts' (or any other investor's) investment in a money market fund.[382] We also note that, unlike our proposal, the amendments we are adopting today will

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379 *See* Coal. of Mutual Fund Invs. Comment Letter; Goldman Sachs Comment Letter.

380 *See* Proposing Release, *supra* note 25, at n.373 (discussing the application of a liquidity fee and stating that "[i]f the shareholder of record making the redemption was a direct shareholder (and not a financial intermediary), we would expect the fee to apply to that shareholder's net redemption for the day."); *see also* ICI Comment Letter ("Currently, systems used to process money market fund transactions do not have the ability to assess a fee by netting one or more purchases against one or more redemptions. This process would be highly complex and require a significant and costly redesign of the processing functionality used by funds and intermediaries today." (footnote omitted)).

381 *See* ICI Comment Letter (noting that "[a]bsent further definition, it would be challenging for funds (and intermediaries assessing the fee) to determine how a shareholder of record requirement applies to multiple accounts of a given beneficial owner....").

382 As discussed herein, however, we recognize that sweep accounts may be unwilling to invest in a money market fund that could impose a gate. *See supra* section III.A.1.c.iv and *infra* note 641.

allow fund boards to institute a fee or gate at any time during the day.[383] To the extent a sweep account's daily investment is made at the end of the day, we believe this change should reduce concerns that the sweep account holder will find out about a redemption restriction only after it has made its daily investment and may lessen the difficulty and costs related to developing a trading system that can ensure an account has sufficient funds to cover the trade itself plus the possibility of a liquidity fee.

With respect to omnibus accounts, we continue to believe that liquidity fees should be handled in a manner similar to redemption fees, which currently may be imposed to deter market timing of mutual fund shares.[384] As discussed in the Proposing Release, we understand that financial intermediaries themselves generally impose redemption fees to record or beneficial owners holding through that intermediary.[385] We recognize commenters' concerns regarding the uniform application of liquidity fees through omnibus accounts. We believe, however, that the benefits and protections afforded to funds and their investors by the fees and gates amendments justify the application of these amendments in the context of omnibus accounts. In this regard, we note, as we did in the Proposing Release, that funds or their transfer agents may contract with intermediaries to have them impose liquidity fees. As we also noted in the Proposing Release, we understand that some money market fund sponsors may want to review their contractual arrangements with their funds' financial intermediaries and service providers to determine whether any contractual modifications are necessary or advisable to ensure that liquidity fees are

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383 *See* rule 2a-7(c)(2)(i).

384 *See* rule 22c-2. Our understanding of how financial intermediaries handle redemption fees in mutual funds is based on Commission staff discussions with industry participants and service providers.

385 *See* Proposing Release, *supra* note 25, at 191.

appropriately applied to beneficial owners of money market fund shares. We further understand that some money market fund sponsors may seek certifications or other assurances that these intermediaries and service providers will apply any liquidity fees to the beneficial owners of money market fund shares. We also recognize that money market funds and their transfer agents and intermediaries may need to engage in certain communications regarding a liquidity fee.

With respect to those commenters who expressed concern over the transparency of fees and gates for omnibus investors, we note that fees and gates will be equally transparent for all investors. Investors, both those that invest directly and those that invest through omnibus accounts, should have access to information about a fund's weekly liquid assets, which will be posted on the fund's website. All money market fund investors also should receive copies of a fund's prospectus, which will include disclosure on fees and gates.

We note that some commenters expressed concern about the costs and burdens associated with the combination of fees and gates and a floating NAV requirement for institutional prime funds.[386] As we stated in the Proposing Release, we do not expect that there will be any significant additional costs from combining the two approaches that are not otherwise discussed separately with respect to each of the fees and gates and floating NAV reforms.[387] As we discussed in the Proposing Release, it is likely that implementing a combined approach will save

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386 *See, e.g.,* Dreyfus Comment Letter (suggesting the combination of both proposed reform options would be "excessive and unduly harmful to the utility of [money market funds] without offering any additional benefit"); Northern Trust Comment Letter (suggesting the combination of both proposed reform options would "be very costly to implement"). For a discussion of the possible movement out of money market funds as result of today's reforms, *see infra* section III.K. *But see* State Street Comment Letter ("State Street does not believe there would be any new costs other than those listed by the staff from a fund accounting, custody or fund administrator point of view by combining the two alternatives.").

387 *See* Proposing Release, *supra* note 25, at 249; *see also infra* section III.B.8 for a discussion of the costs associated with the floating NAV requirement.

some percentage over the costs of implementing each alterative separately as a result of synergies and the ability to make a variety of changes to systems at a single time. We do not expect that combining the approaches will create any new costs as a result of the combination itself.[388] Accordingly, we estimate, as we did in the proposal, that the costs of implementing a combined approach would at most be the sum of the costs of each alternative, but may likely be less.

b. Cost Estimates

As we indicated in the Proposing Release, the costs associated with the fees and gates amendments will vary depending on how a fee or gate is structured, including its triggering event and the level of a fee, as well as on the capabilities, functions and sophistication of the systems and operations of the funds and others involved in the distribution chain, including transfer agents, accountants, custodians and intermediaries. These costs relate to the development of procedures and controls, systems' modifications, training programs and shareholder communications and may vary among funds, shareholders and their service providers.

In the Proposing Release, we estimated a range of hours and costs that may be required to perform activities typically involved in making systems modifications, such as those described above. We estimated that a money market fund (or others in the distribution chain) would incur one-time systems modification costs that range from \$1,100,000 to \$2,200,000.[389] We further estimated that the one-time costs for entities to communicate with shareholders about the

388 *See* State Street Comment Letter.

389 We estimated that these costs would be attributable to the following activities: (i) project planning and systems design; (ii) systems modification, integration, testing, installation, and deployment; (iii) drafting, integrating, implementing procedures and controls; and (iv) preparation of training materials. *See also* Proposing Release, *supra* note 25, at n.245 (discussing the bases of our estimates of operational and related costs in Proposing Release).

liquidity fee or gate would range from $200,500 to $340,000.[390] In addition, we estimated that the costs for a shareholder mailing would range between $1.00 and $3.00 per shareholder.[391]

We also recognized in our proposal that depending on how a liquidity fee or gate is structured, mutual fund groups and other affected entities already may have systems that can be adapted to administer a fee or gate at minimal cost, in which case the costs may be less than the range we estimated above. For example, some money market funds may be part of mutual fund groups in which one or more funds impose deferred sales loads under rule 6c-10 or redemption fees under rule 22c-2, both of which require the capacity to administer a fee upon redemptions and may involve systems that could be adapted to administer a liquidity fee. We estimated that a money market fund shareholder whose systems required modifications to account for a liquidity fee or gate would incur one-time costs ranging from $220,000 to $450,000.[392]

Some of the comments we received regarding the costs of fees and gates included alternate estimates of implementation costs.[393] For example, one commenter indicated that its

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390 We estimated that these costs would be attributable to the following activities: (i) modifying the website to provide online account information and (ii) written and telephone communications with investors. *See also* Proposing Release, *supra* note 25, at n.245 (discussing the bases of our estimates of operational and related costs in Proposing Release).

391 Total costs of the mailing for individual funds would vary significantly depending on the number of shareholders who receive information from the fund by mail (as opposed to electronically).

392 We estimated that these costs would be attributable to the following activities: (i) project planning and systems design; (ii) systems modification, integration, testing, installation; and (iii) drafting, integrating, implementing procedures and controls. *See also* Proposing Release, *supra* note 25, at n.245 (discussing the bases of our estimates of operational and related costs in Proposing Release).

393 We note that some commenters provided industry-wide estimates of approximately $800 million to $1.75 billion for initial implementation of fees and gates, and estimates of approximately $80 to $350 million for annual ongoing costs. *See* ICI Comment Letter; Invesco Comment Letter. As discussed herein, we have analyzed a variety of commenter estimates and provided cost estimates on a per-fund basis (including a fund's distribution chain). We are unable, however, to verify the accuracy or make a relevant comparison between our per-fund cost estimates and the broad range of costs provided by these commenters that apply to all U.S. prime money market fund investors and/or the entire industry because we are unable to estimate how many intermediaries will be affected by the fees and gates amendments.

costs for implementing fees and gates would likely be in the range of $400,000 to $500,000.[394] This commenter further explained that cost of the fees and gates alternative "reflects the ability of the affected entity to custom-design its own approach to implementation, as well as the fact that the necessary changes would not be for use in day-to-day operations, but only for rare occasions."[395]

A number of other commenters, however, expressed concern that the fees and gates amendments would impose significant costs and burdens, higher than those estimated in the Proposing Release.[396] For example, one commenter estimated that it would cost it a total of approximately $11 million in largely one-time costs, reflecting costs of $9 million to implement fees and gates as well as $2 million for the related modifications in disclosure.[397] Another commenter indicated that the implementation costs of fees and gates would be an estimated $1,697,000.[398] Similarly, an industry group conducting a survey of its members found that the implementation costs relating to liquidity fees would likely be $2 million or more, according to 36% of survey respondents.[399] The group also noted that initial costs would be particularly

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394 *See* Federated X Comment Letter.

395 *See id.* As discussed above, another commenter indicated that implementing fees and gates would only require "minimal enhancements" to its core custody/fund accounting systems at "minimal costs," and that most transfer agency and intermediary systems would likely already include "basic functionality to accommodate liquidity fees and gates." *See* State Street Comment Letter. Also as discussed above, an additional commenter noted that, with respect to its Dublin-domiciled money market fund complex that is currently implementing the ability to impose liquidity fees, the implementation process has created costs but that these costs have not been prohibitive. *See* HSBC Comment Letter.

396 *See, e.g.*, IDC Comment Letter; Comment Letter of Dechert LLP (Sept. 17, 2013) ("Dechert Comment Letter"); SPARK Comment Letter.

397 *See* Fidelity Comment Letter.

398 *See* Comment Letter of Financial Information Forum (Sept. 17, 2013) ("Fin. Info. Forum Comment Letter") ("Based on the available information, one back office processing service provider estimates the implementation cost of … Alternative 2 at $1,697,000.")

399 SIFMA Comment Letter. The survey also included the following results for implementation costs: 24% in

significant for distributors and intermediaries, with 60% of respondents estimating initial costs at $2 million or more.[400] In addition, the survey found initial costs associated with gates to range from $1 million to $10 million.[401]

Based on the information provided by commenters, as well as the operational changes in the final rule, we are increasing our estimates for implementation costs for fees and gates. Three of the four commenters who provided estimates suggested that the implementation costs would be around $2,000,000 or more.[402] In addition, we estimate that a fund's ability to impose a fee or gate intra-day (as opposed to the end of the day, as contemplated by the proposal) may result in increased operational costs related to the implementation of fees and gates. Accordingly, we have increased our original estimate of $1,100,000 to $2,200,000[403] for one-time systems modification costs to a higher estimate of $1,750,000 to $3,000,000.[404] We continue to estimate that the one-time costs for entities to communicate with shareholders (including systems costs related to communications) about fees and gates would range from $200,500 to $340,000. In addition, we are increasing the estimated cost for a shareholder mailing from between $1.00 and

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the $2 million to $5 million range, 8% in the $5 million to $10 million range, and 4% in the $10 million to $15 million range.

400 *Id.* The commenter's survey indicated that 40% of asset managers would incur $2 to $5 million in initial costs.

401 *Id.* The survey indicated costs of $1 million to $2 million according to 17% of respondents, $2 million to $5 million according to another 17% of respondents, and $5 million to $10 million according to 8% of respondents.

402 *See supra* notes 394 - 401 and accompanying text.

403 We note that, in the Proposing Release, our estimate was based on a money market fund that determined it would only impose a flat liquidity fee of a fixed percentage known in advance and have the ability to impose a gate. This estimate was based on our proposal, which included less flexibility than today's amendments. Accordingly, our revised estimates account for a money market fund that has the ability to vary the level of a fee at imposition or thereafter, or impose a gate.

404 As with our estimate in the Proposing Release, these amounts reflect the costs of one-time systems modifications for a money market fund and/or others in its distribution chain.

$3.00 per shareholder to between $2.00 and $3.00 per shareholder, recognizing that it is unlikely such a mailing would cost $1.00. We continue to estimate one-time costs of $220,000 to $450,000 for a money market fund shareholder whose systems (including related procedures and controls) required modifications to account for a liquidity fee or redemption gate.

We recognized in our proposal that adding new capabilities or capacity to a system will entail ongoing annual maintenance costs and understand these costs generally are estimated as a percentage of initial costs of building or expanding a system. We also recognized that ongoing costs related to fees and gates may include training costs. In the proposal, we estimated that the costs to maintain and modify the systems required to administer a fee or gate (to accommodate future programming changes), to provide ongoing training, and to administer the fee or gate on an ongoing basis would range from 5% to 15% of the one-time costs. We understand that funds may impose varying liquidity fees and that the cost of varying liquidity fees could exceed this range, but because such costs depend on to what extent the fees might vary, we do not have the information necessary to provide a reasonable estimate of how much more (if any) varying fees might cost to implement.

One commenter indicated a lower estimate of approximately $164,000 for annual ongoing costs.[405] Another commenter, an industry group that surveyed its members, indicated that ongoing annual costs of implementing a liquidity fee are likely to range from 10% to 20% of initial costs.[406] The same commenter indicated that ongoing annual costs related to redemption

405 *See* Federated X Comment Letter.

406 *See* SIFMA Comment Letter. The survey indicated 10% to 15% of initial costs for 17% of respondents, 15% to 20% of initial costs for 12% of respondents, and 20+% of initial costs for 8% of respondents. With respect to distributor/intermediary respondents, the commenter indicated that ongoing annual costs for a liquidity fee are estimated as 10% to 20% of initial costs by 29% of distributor/intermediary respondents

gates were estimated as 10% to 20% of initial cost by 33% of survey respondents.[407] Based on these estimates, which are largely similar to our estimates of 5-15% in the Proposing Release, we continue to believe our estimates in the Proposing Release are appropriate.

We also recognize that funds may incur costs in connection with board meetings held to determine if fees and/or gates are in the best interests of the fund. In the Proposing Release, we estimated an average annual time cost of approximately $9,895 per fund in connection with each such board meeting.[408] We did not receive comments on this estimate. As discussed in section IV.A.3 herein, we are revising our estimate from $9,895 per fund to $10,700 as result of updated industry data.[409]

Although we have estimated the costs that a single affected entity would incur, we anticipate that many money market funds, transfer agents, and other affected entities may not bear the estimated costs on an individual basis. Instead, the costs of systems modifications likely would be allocated among the multiple users of the systems, such as money market fund members of a fund group, money market funds that use the same transfer agent or custodian, and intermediaries that use systems purchased from the same third party. Accordingly, we expect that the cost for many individual entities may be less than the estimated costs due to economies

(evenly split between those who estimate 10% to 15% of initial cost and those who estimate 15% to 20%). For asset managers, the commenter indicated that ongoing annual costs for a liquidity fee are estimated to be 10% to 15% of initial costs by 20% of respondents, 15% to 20% of initial costs by 10% of respondents and 20+% of initial costs by 20% of respondents.

407 *See* SIFMA Comment Letter. The commenter note that the 33% of survey respondents were evenly split between those who estimated 10% to 15% of initial cost and those who estimated 15% to 20% of initial cost.

408 *See* Proposing Release, *supra* note 25, at 549.

409 *See infra* section IV.A.3 (discussing the PRA estimates for board determinations under the fees and gates amendments and noting that certain estimates have increased from those in the proposal as a result of the increased number of funds that may cross the higher weekly liquid assets threshold of 30% (as compared to 15%) for the imposition of fees and gates).

of scale in allocating costs among this group of users.

6. *Tax Implications of Liquidity Fees*

As discussed in the Proposing Release, we understand that liquidity fees may have certain tax implications for money market funds and their shareholders.[410] We understand that for federal income tax purposes, shareholders of mutual funds that impose a redemption fee pursuant to rule 22c-2 under the Investment Company Act generally treat the redemption fee as offsetting the shareholder's amount realized on the redemption (decreasing the shareholder's gain, or increasing the shareholder's loss, on redemption).[411] Consistent with this characterization, funds generally treat the redemption fee as having no associated tax effect for the fund.[412] We understand that a liquidity fee will be treated for federal income tax purposes consistently with the way that funds and shareholders treat redemption fees under rule 22c-2.

If, as described above, a liquidity fee has no direct federal income tax consequences for the money market fund, that tax treatment will allow the fund to use 100% of the fee to help repair a market-based NAV per share that was below $1.00. If redemptions involving liquidity fees cause a stable value money market fund's shadow price to reach $1.0050, however, the fund may need to distribute to the remaining shareholders sufficient value to prevent the fund from

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410 As discussed above, the liquidity fee we are adopting today is analogous to a redemption fee under rule 22c-2, which allows mutual funds to recover costs associated with frequent mutual fund share trading by imposing a redemption fee on shareholders who redeem shares within seven days of purchase.

411 *Cf.* 26 CFR 1.263(a)–2(e) (commissions paid in sales of securities by persons who are not dealers are treated as offsets against the selling price); *see also* Investment Income and Expenses (Including Capital Gains and Losses), IRS Publication 550, at 44 (fees and charges you pay to acquire or redeem shares of a mutual fund are not deductible. You can usually add acquisition fees and charges to your cost of the shares and thereby increase your basis. A fee paid to redeem the shares is usually a reduction in the redemption price (sales price).), *available at* http://www.irs.gov/pub/irs-pdf/p550.pdf.

412 *See* ICI Comment Letter ("Pursuant to section 311(a)(2) of the Internal Revenue Code, corporations (including investment companies) do not recognize gain or loss upon a redemption of their shares.").

breaking the buck on the upside (*i.e.*, by rounding up to $1.01 in pricing its shares).[413] We understand that any such distribution would be treated as a dividend to the extent that the money market fund has sufficient earnings and profits. Both the fund and its shareholders would treat these additional dividends the same as they treat the fund's routine dividend distributions. That is, the additional dividends would be taxable as ordinary income to shareholders and would be eligible for deduction by the funds.

In the absence of sufficient earnings and profits, however, some or all of these additional distributions would be treated as a return of capital. Receipt of a return of capital would reduce the recipient shareholders' basis (and thus could decrease a loss, or create or increase a gain for the shareholder in the future when the shareholder redeems the affected shares). Thus, in the event of any return of capital distributions, as we noted in the Proposing Release, there is a possibility that the fund, other intermediaries, and the shareholders might become subject to tax-reporting or tax-payment obligations that do not affect stable value money market funds currently operating under rule 2a-7.[414]

Commenters were concerned with this possibility – that investors may have to recognize capital gains or reduced losses if a fund makes a distribution to shareholders in order to avoid "breaking the buck" on the upside as a result of excessive fees.[415] Commenters noted that such

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413 *See* rule 2a-7(g)(2).

414 *See* Proposing Release, *supra* note 25, at 207. Funds that strive to maintain a stable NAV per share currently are not subject to these transaction reporting requirements. We have been informed that, today, the Department of the Treasury and the IRS are proposing new regulations to exempt all money market funds from transaction reporting obligations. As we describe below, funds and brokers may rely on this exemption immediately. We note that at least one commenter indicated that funds and intermediaries may want to provide certain tax information to their investors even if it is not required. *See* ICI Comment Letter.

415 *See, e.g.*, Fidelity Comment Letter; BlackRock II Comment Letter; Wells Fargo Comment Letter.

distributions and the resulting capital gains or losses upon disposition of investors' shares would require funds and intermediaries to start tracking investors' basis in shares of a fund.[416] In order to avoid such basis tracking, commenters suggested that the Treasury Department and the Internal Revenue Service ("IRS") issue guidance stating that when a money market fund is required to make a payment of excess fees in order to avoid breaking the buck, the fund should be deemed to have sufficient earnings and profits to treat the distribution as a taxable dividend.[417]

Although these events are hypothetically possible, the scenario that would lead to a payment of excess fees to fund shareholders without sufficient earnings and profits is subject to many contingencies that make it unlikely to occur. First, as we discussed above, under normal market conditions, we believe funds will rarely impose liquidity fees. Second, we believe it is highly unlikely that shareholders would redeem with such speed and in such volume that the redemptions would create a danger of breaking the buck on the upside before a fund could remove a fee. Third, the distributions to avoid breaking the buck might not exceed the fund's earnings and profits. For this purpose, we understand that the fund's earnings and profits take into account the fund's income through the end of the taxable year. Thus, unless the additional distribution occurs very close to the end of the taxable year, some of the money market fund's subsequent income during the year will operate to qualify these distributions as dividends.[418]

Finally, as discussed in the Proposing Release, we understand that the tax treatment of a

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416 *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; BlackRock II Comment Letter; SIFMA Comment Letter; *but see, e.g.,* State Street [Appendix 4] (suggesting that a liquidity fee causing the shadow price to exceed $1.0049 would not result in special distribution to shareholders but most likely be recorded as income to the fund and paid out to shareholders as an ordinary income distribution).

417 *See, e.g.,* BlackRock II Comment Letter; ICI Comment Letter; Wells Fargo Comment Letter.

418 A portion of this subsequent income may also have to be distributed to avoid breaking the buck on the upside. However, if the fund attracts new shareholders, we understand that some of the subsequent income can be retained, with its associated earnings and profits qualifying the earlier distributions as dividends.

liquidity fee may impose certain operational costs on money market funds and their financial intermediaries and on shareholders. However, we have been informed that the Treasury Department and the IRS today will propose new regulations exempting all money market funds from certain transaction reporting requirements.[419] This exemption is to be formally applicable for calendar years beginning on or after the date of publication in the Federal Register of a Treasury Decision adopting those proposed regulations as final regulations. The Treasury Department and the IRS have informed us, however, that the text of the proposed regulations will state that persons subject to transaction reporting may rely on the proposed exemption for all calendar years prior to the final regulations' formal date of applicability. Therefore, the Treasury Department and IRS relief described above is available immediately.

Thus, even in the unlikely event that some shareholders' bases in their shares change due to non-dividend distributions, neither fund groups nor their intermediaries will need to track the tax bases of money market fund shares. On the other hand, if there are any non-dividend distributions by money market funds, the affected shareholders will need to report in their annual tax filings any resulting gains[420] or reduced losses upon the sale of affected money market fund shares. We are unable to quantify with any specificity the tax and operational costs discussed in this section because we are unable to predict how often liquidity fees will be imposed by money market funds and how often redemptions subject to liquidity fees would cause the funds to make

419 *See infra* section III.B.6.a.

420 Redemptions subject to a liquidity fee would almost always result in losses, but gains are possible in the unlikely event that a shareholder received a return of capital distribution with respect to some shares. Because a later redemption of the shares by the shareholder would be for $1.00 each, there would be small gains with respect to those redemptions. If the money market fund making such a non-dividend distribution is a floating NAV money market fund and if a shareholder uses the simplified aggregate method discussed below in section III.B.6.a, then the shareholder would be able to report the gain or loss without having to track the basis of individual shares.

returns of capital distributions to the remaining shareholders (although, as noted above, we believe such returns of capital distributions are unlikely). Commenters did not provide any such estimates.

7. *Accounting Implications*

A number of commenters questioned whether an investment in a money market fund subject to a possible fee or gate, or in a money market fund that in fact imposes a fee or gate, would continue to qualify as a "cash equivalent" for purposes of U.S. Generally Accepted Accounting Principles ("U.S. GAAP").[421] We understand that classifying money market fund investments as cash equivalents is important because, among other things, investors may have debt covenants that mandate certain levels of cash and cash equivalents.[422] To remove any uncertainty, several commenters requested that the Commission, the Financial Accounting Standards Board ("FASB") and/or Government Accounting Standards Board ("GASB") issue guidance to clarify whether investments in money market funds will continue to qualify as cash equivalents under U.S. GAAP.[423] Various commenters on our proposal, including the American Institute of Certified Public Accountants ("AICPA") and each of the "Big Four" accounting firms, stated that a money market fund's ability to impose fees and gates should not preclude an

421 *See, e.g.,* Invesco Comment Letter; BlackRock II Comment Letter; Wells Fargo Comment Letter; *see also* Proposing Release, *supra* note 25, at 246 (stated that "we expect the value of floating NAV funds with liquidity fees and gates would be substantially stable and should continue to be treated as a cash equivalent under GAAP."); ICI Comment Letter (suggesting that any such Commission guidance should also "discuss whether a money market fund that imposes a liquidity fee and/or gate would continue to be considered a cash equivalent investment and whether the amount of the fee or the length of the gate would affect the analysis.")

422 In addition, some corporate investors may perceive cash and cash equivalents on a company's balance sheet as a measure of financial strength.

423 *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Fin. Svcs. Roundtable Comment Letter; *see also* Proposing Release, *supra* note 25, at 246 (suggesting that funds with the ability to impose fees and gates should still be considered cash equivalents). As discussed in section III.C.4 herein, we do not have authority over the actions that GASB may or may not take with respect to LGIPs.

investment in the fund from being classified as a "cash equivalent" under U.S. GAAP.[424]

Current U.S. GAAP defines cash equivalents as "short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates."[425] U.S. GAAP includes an investment in a money market fund as an example of a cash equivalent.[426] The Commission's position continues to be that, under normal circumstances, an investment in a money market fund that has the ability to impose a fee or gate under rule 2a-7(c)(2) qualifies as a "cash equivalent" for purposes of U.S. GAAP.[427] However, as is currently the case, events may occur that give rise to credit and liquidity issues for money market funds. If such events occur, including the imposition of a fee or gate by a money market fund under rule 2a-7(c)(2), shareholders would need to reassess if their investments in that money market fund continue to meet the definition of a cash equivalent. A more formal pronouncement (as requested by some commenters) to confirm this position is not required because the federal securities laws provide the Commission with plenary authority to set accounting standards, and we are doing so here.[428]

If events occur that cause shareholders to determine that their money market fund shares

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424 *See* Comment Letter of American Institute of Certified Public Accountants, Financial Reporting Executive Committee (Sept. 16, 2013) ("AICPA Comment Letter); Comment Letter of Ernst & Young LLP (Sept. 12, 2013) ("Ernst & Young Comment Letter"); Comment Letter of Deloitte & Touche LLP (Sept. 17, 2013) ("Deloitte Comment Letter"); Comment Letter of KPMG LLP (Sept. 17, 2013) ("KPMG Comment Letter"); Comment Letter of PricewaterhouseCoopers LLP (Sept. 16, 2013) ("PWC Comment Letter").

425 *See* FASB Accounting Standards Codification ("FASB ASC") paragraph 305-10-20.

426 *Id.*

427 We are also amending the Codification of Financial Reporting Policies to reflect our interpretation under U.S. GAAP, as discussed below. *See infra* section VI.

428 The federal securities laws provide the Commission with authority to set accounting and reporting standards for public companies and other entities that file financial statements with the Commission. *See, e.g.*, 15 U.S.C. 77g, 77s, 77aa(25) and (26); 15 U.S.C. 78c(b), 78l(b) and 78m(b); section 8, section 30(e), section 31, and section 38(a) of the Investment Company Act.

are not cash equivalents, the shares would need to be classified as investments, and shareholders would have to treat them either as trading securities or available-for-sale securities.[429] For example, during the financial crisis, certain money market funds experienced unexpected declines in the fair value of their investments due to deterioration in the creditworthiness of their assets and, as a result, portfolios of money market funds became less liquid. Investors in these money market funds would have needed to determine whether their investments continued to meet the definition of a cash equivalent.

B. Floating Net Asset Value

1. Introduction

As discussed earlier in this Release, absent an exemption specifically provided by the Commission from various provisions of the Investment Company Act, all registered mutual funds must price and transact in their shares at the current NAV, calculated by valuing portfolio instruments at market value, in the case of securities for which market quotations are readily available, or, at fair value, as determined in good faith by the fund's board of directors, in the case of other securities and assets (*i.e.*, use a floating NAV).[430] Under rule 2a-7, the Commission has exempted money market funds from this floating NAV requirement, allowing them to price and transact at a stable NAV per share (using the amortized cost and penny rounding methods), provided that they follow certain risk-limiting conditions.[431] In doing so, the Commission was statutorily required to find that such an exemption was in the public interest and consistent with

429 *See* FASB ASC paragraph 320-10-25-1. This accounting treatment would not apply to entities to which the guidance in FASB ASC Topic 320 does not apply. *See* FASB ASC paragraph 320-10-15-3.

430 *See supra* section I.

431 *Id.*

the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.[432] Accordingly, when providing this exemption in 1983, the Commission considered the benefits of a stable value product as a cash management vehicle for investors, but also imposed a number of conditions designed to minimize the risk inherent in a stable value fund that some shareholders may redeem and receive more than their shares are actually worth, thus diluting the holdings of remaining shareholders.[433] At the time, the Commission was persuaded that deviations in value that could cause material dilution to investors generally would not occur, given the risk-limiting conditions of the rule.[434] Experience, however, has shown that deviations in value do occur, and at times, can be significant.

As discussed above, money market funds' sponsors on a number of occasions have voluntarily chosen to provide financial support for their money market funds for various reasons, including to keep a fund from re-pricing below its stable value, suggesting that material deviations in the value in money market funds have not been a rare occurrence.[435] This historical experience, combined with the events of the financial crisis, has caused us to reconsider the exemption from the statutory floating NAV requirement for money market funds in light of our responsibilities under the Act in providing this exemption. In doing so, we again took into

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432 Section 6(c) of the Investment Company Act provides the Commission with broad authority to exempt persons, securities or transactions from any provision of the Investment Company Act, or the regulations thereunder, if and to the extent that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See Commission Policy and Guidelines for Filing of Applications for Exemption*, SEC Release No. IC-14492 (Apr. 30, 1985).

433 *See* Proposing Release, *supra* note 25, at n.9. The Commission was similarly concerned with the risk that redeeming shareholders may receive less than their shares were worth and that purchasing shareholders may pay too little for their shares, diluting remaining shareholders.

434 *Id.*

435 *See supra* section II.B.4

account the benefits of money market funds as a stable value cash management product for investors, but also considered all of the historical and empirical information discussed in section I above, the Investment Company Act's general obligation for funds to price and transact in their shares at the current NAV, and developments since 1983.

We considered the many reasons shareholders may engage in heavy redemptions from money market funds—potentially resulting in the dilution of share value that the Investment Company Act's provisions are designed to avoid—and have tailored today's final rules accordingly. In particular, while many investors may redeem because of concerns about liquidity, quality, or lack of transparency—and our fees and gates, disclosure, and reporting reforms are primarily intended to address those incentives—an incremental incentive to redeem is created by money market funds' current valuation and pricing methods. As discussed below, this incremental incentive to redeem exacerbates shareholder dilution in a stable NAV product because non-redeeming shareholders are forced to absorb losses equal to the difference between the market-based value of the fund's shares and the price at which redeeming shareholders transact. For the reasons discussed below, we believe that this incentive exists largely in prime money market funds because these funds exhibit higher credit risk that make declines in value more likely (compared to government money market funds).[436] We further believe history shows that, to date, institutional investors have been significantly more likely than retail investors to act on this incentive.[437] Thus, given the tradeoffs involved in requiring that any money market fund

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436 *See infra* section III.C.1; *see also, e.g.,* Fidelity Comment Letter; ICI Comment Letter; Comm. Cap. Mkt. Reg. Comment Letter.

437 *See infra* section III.C.2 and DERA Study, *supra* note 24; *see also, e.g.,* Schwab Comment Letter; Fin. Svcs. Roundtable Comment Letter; Vanguard Comment Letter.

transact at a floating NAV, we are limiting this reform (and thus the repeal of the special exemptive relief allowing these funds to price other than as required under the Investment Company Act) to institutional prime funds.

As discussed previously, the first investors to redeem from a stable value money market fund that is experiencing a decline in its NAV benefit from a "first mover advantage" as a result of rule 2a-7's current valuation and pricing methods, which allows them to receive the full stable value of their shares even if the fund's portfolio value is less.[438] One possible reason that institutional prime funds may be more susceptible to rapid heavy redemptions than retail funds is that their investors are often more sophisticated, have more significant money at stake, and may have a lower risk tolerance due to legal or other restrictions on their investment practices.[439] Institutional investors may also have more resources to carefully monitor their investments in money market funds. Accordingly, when they become aware of potential problems with a fund, institutional investors may quickly redeem their shares among other reasons, to benefit from the first mover advantage.[440] When many investors try to redeem quickly, whether to benefit from the first mover advantage or otherwise, money market funds may experience significant stress. As discussed above, even a few high-dollar redemptions by institutional investors (because of their greater capital at stake) may have a significant adverse effect on a fund as compared with retail investors whose investments are typically smaller and would therefore require a greater

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438 *See supra* section II.B.3. This first mover advantage does not have the same degree of value in other mutual funds that do not have a stable value because investors receive the market value of their shares when redeeming from a floating NAV fund.

439 *See, e.g.*, Systemic Risk Council Comment Letter.

440 *Id.*; *see, e.g.* TIAA-CREF Comment Letter; Systemic Risk Council Comment Letter.

number of redemptions to have a similar effect.[441] This can lead to the very dilution of fund shares that we were concerned about when we first provided the exemptions in rule 2a-7 permitting funds to use different valuation and pricing methods than other mutual funds to facilitate maintaining a stable value.[442]

As discussed in the previous section, our fee and gate reform is designed to address some of the risks associated with money market funds that we have identified in this Release, but does not address them all. In particular, fees and gates are intended to enhance money market funds' ability to manage and mitigate potential contagion from high levels of redemptions and make redeeming investors pay their share of the costs of the liquidity that they receive. But those reforms do not address the incremental incentive to redeem from a fund with a shadow price below $1.00 that is at risk of breaking the buck. As a result of their sophistication, risk tolerance, and large investments, institutional investors are more likely to redeem at least in part due to this first mover advantage.[443]

This has led to us re-evaluate our decision to provide an exemption allowing amortized cost valuation and penny rounding pricing for money market funds with these specific kinds of investors.[444] As discussed above, this exemption was originally premised on our expectation that

441 *See supra* text following note 66.

442 *See infra* section III.B.3.b; *see, e.g.*, Schwab Comment Letter.

443 *See, e.g.* Comment Letter of United Services Automobile Association (Feb. 15. 2013) (available in File No. FSOC–2012 0003) (''USAA FSOC Comment Letter''); *see, e.g.*, Systemic Risk Council Comment Letter; *but see, e.g.*, HSBC Comment Letter (arguing that first mover advantage that results from the valuation and pricing methods in rule 2a-7 is overstated in light of the real world issues with information and time to act, and that other motivations are the primary driver of redemptions); Dreyfus Comment Letter.

444 A number of commenters agreed with our proposed approach of only targeting the funds most susceptible to runs (institutional prime) with the floating NAV requirement. *See, e.g.*, Fin. Svcs. Roundtable Comment Letter ("… a floating NAV confined to institutional prime funds represents a reasonable targeting of reform efforts at the segment of the market that has shown the most proclivity to runs."); Vanguard Comment

funds that followed the requirements of rule 2a-7 would be unlikely to experience material deviations from their stable value. With respect to prime funds in particular, this expectation has proven inaccurate with enough regularity to cause concern, especially given the potentially serious consequences to investors and the markets that can and has resulted at times. Accordingly, for the reasons discussed above and in other sections of this Release,[445] we no longer believe that exempting institutional prime money market funds under section 6(c) of the Act is appropriate—*i.e.*, we find that such an exemption is no longer in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.[446] As discussed in detail in the sections that follow, we are now rescinding the exemption that allows institutional prime funds to maintain a stable NAV and are requiring them to price and transact in their shares at market-based value, like all other mutual funds.[447]

This reform is intended to work in concert with the liquidity fees and gates reforms discussed above (as well as other reforms discussed in section III.K.3). The floating NAV requirement, applicable only to institutional prime funds, balances concerns about the risks of heavy redemptions from these funds in times of stress and the resulting negative impacts on short-term funding markets and potential dilution of investor shares, with the desire to preserve, as much as possible, the benefits of money market funds for investors.[448] Consistent with a core

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445 *See supra* section II; *infra* sections III.B.3.a and III.B.3.b.

446 *See supra* note 432.

447 *See, e.g.,* Systemic Risk Council Comment Letter ("A floating NAV (for all funds) is the same simple regulatory framework that applies to all other mutual funds…").

448 *See infra* section III.B.3 (discussing the benefits of a floating NAV requirement).

objective of the Investment Company Act, the floating NAV reform may also lessen the risk of unfairness and potential wealth transfers between holding and redeeming shareholders by mutualizing any potential losses among all investors, including redeeming shareholders. We do not intend, and the floating NAV reform does not seek, to deter redemptions that constitute rational risk management by shareholders or that reflect a general incentive to avoid loss.[449] Instead, as discussed below, the requirement is designed to achieve two independent objectives: (1) to reduce the first mover advantage inherent in a stable NAV fund due to rule 2a-7's current valuation and pricing methods by dis-incentivizing redemption activity that can result from investors attempting to exploit the possibility of redeeming shares at the stable share price even if the portfolio has suffered a loss; and (2) to reduce the chance of unfair investor dilution, which would be inconsistent with a core principle of the Investment Company Act. An additional motivation for this reform is that the floating NAV may make it more transparent to certain of the impacted investors that they, not the fund sponsors or the federal government, bear the risk of loss. Many commenters suggested that, among the reform alternatives proposed, the floating NAV reform is the most meaningful.[450]

2. *Summary of the Floating NAV Reform*

The liquidity fees and gates amendments apply to all money market funds (with the exception of government money market funds). Today we are also adopting a targeted reform designed to address the specific risks associated with institutional prime money market funds.[451]

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449 A number of commenters agreed with this goal. *See, e.g.,* Schwab Comment Letter; Systemic Risk Council Comment Letter.

450 *See, e.g.*, Boston Federal Reserve Comment Letter; Systemic Risk Council Comment Letter; Thrivent Comment Letter.

451 The floating NAV reform will not apply to government and retail money market funds. *See* rule 2a-

We are doing so by amending rule 2a-7 to rescind certain exemptions that have permitted these funds to maintain a stable price by use of amortized cost valuation and/or penny-rounding pricing—as a result, institutional prime money market funds will transact at a floating NAV.[452]

Under our reform, institutional prime money market funds will value their portfolio securities using market-based factors and will sell and redeem shares based on a floating NAV.[453] Under the final rules, and as we proposed, institutional prime funds will round prices and transact in fund shares to four decimal places in the case of a fund with a $1.00 target share price (*i.e.*, $1.0000) or an equivalent or more precise level of accuracy for money market funds with a different share price (*e.g.*, a money market fund with a $10 target share price could price its shares at $10.000). Institutional prime money market funds will still be subject to the risk-limiting conditions of rule 2a-7.[454] Accordingly, they will continue to be limited to investing in short-term, high-quality, dollar-denominated instruments, but will not be able to use the amortized cost or penny rounding methods to maintain a stable value. Finally, funds subject to the floating NAV reform will be subject to the other reforms discussed in this Release.

7(a)(16) (defining "government money market fund"); rule 2a-7(a)(25) (defining "retail money market fund"). Government and retail money market funds are discussed *infra* in sections III.C.1 and III.C.2.

452 Rule 2a-7(c)(1) (Share price calculation). As discussed below, an institutional prime money market fund may continue to call itself a "money market fund" provided that it follows the other conditions in rule 2a-7. But it may not use the amortized cost and penny rounding methods to maintain a stable NAV. *See* rule 2a-7(b); *infra* note 629 and accompanying text (discussing rule 35d-1, the "names rule").

453 *See* rule 2a-7(c)(1). We discuss floating NAV money market fund share pricing in section III.B.4. A money market fund that currently chooses to use amortized cost valuation typically also uses a penny-rounding convention to price fund shares. *See* 1983 Adopting Release, *supra* note 3. Although not generally used, a money market fund may also currently choose to maintain a stable NAV solely by using penny-rounding pricing. As discussed below, these money market funds would be able to use amortized cost valuation only to the same extent other mutual funds are able to do so—where the fund's board of directors determines, in good faith, that the fair value of debt securities with remaining maturities of 60 days or less is their amortized cost, unless the particular circumstances warrant otherwise. *See* ASR 219, *supra* note 5; we discuss the use of amortized cost below. *See infra* section III.B.5.

454 *See* rule 2a-7(d) (risk-limiting conditions).

As discussed in section III.B.9 below, institutional prime money market funds will have two years to comply with the floating NAV reform. Although some commenters, including some sponsors of money market funds, expressed general support for the floating NAV reform as it was proposed,[455] the majority of commenters generally opposed requiring institutional prime money market funds to implement a floating NAV.[456] Below, we address the principal considerations and requirements of the floating NAV reform, discuss comments received, and how if applicable, the amendments have been revised to address commenter concerns.

3. *Certain Considerations Relating to the Floating NAV Reform*

a. A Reduction in the Incentive to Redeem Shares

When a money market fund's shadow price is less than the fund's $1.00 share price, shareholders have an economic incentive to redeem shares ahead of other investors. In the Proposing Release, we noted that the size of institutional investors' holdings and their resources for monitoring funds provide the motivation and means to act on this incentive, and observed that institutional investors redeemed shares at a much higher rate than retail investors from prime money market funds in both September 2008 and June 2011.[457] We also noted, as some market observers had suggested, that the valuation and pricing techniques currently permitted by rule 2a-7 may underlie this incentive to redeem ahead of other shareholders and to obtain $1.00 per share when investors become aware (or expect) that the actual value of the fund's shares is below

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455 *See, e.g.*, Goldman Sachs Comment Letter; Schwab Comment Letter; T. Rowe Price Comment Letter; Vanguard Comment Letter; Comment Letter of CFA Institute (Sept. 19, 2013) ("CFA Institute Comment Letter").

456 *See, e.g.*, Federated II Comment Letter; Comment Letter of Arnold & Porter LLP on behalf of Federated Investors (Floating NAV) (Sept. 13, 2013) ("Federated IV Comment Letter"); Federated X Comment Letter; J.P. Morgan Comment Letter; Comment Letter of U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Aug. 1, 2013) ("Chamber I Comment Letter"); Chamber II Comment Letter.

457 *But see supra* note 68.

(or will fall below) $1.00.[458] As discussed below, to address this incentive, the floating NAV reform mandates that institutional prime funds transact at share prices that reflect current market-based factors (not amortized cost or penny rounding, as currently permitted) and therefore remove investors' incentives to redeem early to take advantage of transacting at a stable value.

Some commenters agreed that a floating NAV mitigates the first mover incentive to redeem ahead of other shareholders that results from current rule 2a-7's valuation and pricing methods.[459] Two commenters also noted that requiring institutional prime funds to adopt a floating NAV would force investors who cannot tolerate any share price movement into other products that better match their risk tolerances.[460] According to these commenters, investors who remain in floating NAV funds may have a greater tolerance for loss and may be less likely to redeem quickly in times of market stress.[461]

Several commenters generally objected to our reasoning that our floating NAV reform (by addressing the economic incentive inherent in rule 2a-7) would reduce the incentive for shareholders to redeem ahead of other investors in times of market stress, observing that a floating NAV may not eliminate investors' incentive to redeem to the extent that it results from the desire to move to investments of higher quality or greater liquidity.[462] Both the DERA Study

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458 *See* Proposing Release, *supra* note 25, at n.139.

459 *See, e.g.*, Thrivent Comment Letter; TIAA-CREF Comment Letter; Fin. Svcs. Roundtable Comment Letter; SIFMA Comment Letter; Systemic Risk Council Comment Letter.

460 *See* Thrivent Comment Letter; Vanguard Comment Letter; *see infra* section III.B.3.c.

461 *See* Vanguard Comment Letter.

462 *See, e.g.*, Dreyfus Comment Letter; Federated IV Comment Letter; Chamber II Comment Letter; Comment Letter of The Squam Lake Group (Sept. 17, 2013) ("Squam Lake Comment Letter"); Ropes & Gray Comment Letter.

and Proposing Release discussed this concern.[463] As the DERA Study noted, the incentive for investors to redeem ahead of other investors may be heightened by liquidity concerns–when cash levels are insufficient to meet redemption requests, funds may be forced to sell portfolio securities into illiquid secondary markets at discounted or even fire-sale prices.[464] The floating NAV reform may not fully address the incentive to redeem because market-based pricing may not capture the likely increasing illiquidity of a fund's portfolio as it sells its more liquid assets first during a period of market stress to defer liquidity pressures as long as possible.[465]

We acknowledge that a floating NAV does not eliminate the incentive to redeem in pursuit of higher quality or greater liquidity—indeed, we intend to address the risks associated with these incentives primarily through our fees and gates reform. However, we continue to believe that a floating NAV should mitigate the incentive to redeem due to the mismatch between the stable NAV price and the actual value of fund shares because shareholders will receive a market value for their shares rather than a fixed price when they redeem. Importantly, the complementary liquidity fees and gates aspect of our money market reforms would also apply to institutional prime funds that are subject to a floating NAV. As discussed previously, while not intended to stem investors' desire to move to more liquid or higher quality investments, liquidity fees are specifically designed to ensure that redeeming investors pay the costs of the liquidity they receive, and redemption gates are designed as a tool to allow funds to manage heavy redemptions in times of stress and thus reduce the chance of harm to the fund and

463 *See* Proposing Release, *supra* note 25, at section III.A.1.c.

464 *See* DERA Study, *supra* note 24, at 4 (noting that most money market fund portfolio securities are held to maturity, and secondary markets in these securities are not deeply liquid).

465 *Id.*

investors. In this way, we believe that the totality of our money market fund reforms addresses comprehensively many features of money market funds, including the characteristics of their investor base that can make them susceptible to heavy redemptions, and gives fund boards new tools for addressing a loss of liquidity that may develop in funds.[466]

One commenter submitted a white paper concluding that (i) liquidity fees and gates, if implemented effectively, could stop and prevent runs; and (ii) although a variable NAV would not stop a run, it could mitigate the first mover advantage associated with the motivation to run that results from small shadow price departures from \$1.00.[467] The authors of the paper concluded further that the ability of a variable NAV to mitigate this first mover advantage is overstated when viewed in light of the real-world costs of moving between investments that investors will face and, in a significant stress event, such effect is a minor determinant of behavior.[468] We acknowledge this view and agree, as discussed above, that a floating NAV cannot stop redemptions when (as assumed in the paper) investors are redeeming in a flight to quality due to a continuing deterioration of the credit risk in a fund's portfolio. However, the floating NAV reform reduces the benefit from redeeming ahead of others to at most one half of a hundredth of a cent per share[469]–100 times less than it is currently–which investors would weigh

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466 Some commenters agreed that a floating NAV alone is not enough to address these incentives. *See, e.g.*, Americans for Fin. Reform Comment Letter ("[w]hile the floating NAV has clear benefits in making clear that investor assets are at risk of loss, we are concerned that a floating NAV alone will not create a sufficient disincentive for investors to engage in 'runs' on MMFs.").

467 *See* Treasury Strategies III Comment Letter (submitting a white paper: Carfang, et al., Proposed Money Market Mutual Fund Regulations: A Game Theory Assessment (using "game theory" analysis to evaluate whether a variable NAV and/or a constant NAV, with or without the ability to impose a liquidity fee or gate, can prevent or stop a run on money market fund assets).

468 *Id.*

469 For example, the floating NAV at 4 decimals will adjust from \$1.0000 to \$0.9999 as soon as the value reaches \$0.99995. Hence, the most an investor can benefit from redeeming ahead of others and switching

against the cost of switching to an alternative investment.[470] As we discuss above, the floating NAV reform is designed to supplement the fees and gates reform only for those funds that are more vulnerable to credit events (compared to government funds) and that have an investor base more likely to engage in heavy redemptions (compared to retail investors) because of, among other reasons, the first mover advantage created by the funds' current valuation and pricing practices. Specifically, compared to the current stable NAV environment, a variable NAV will significantly limit the value of the first mover advantage. Although this first mover advantage may not be the main driver of investor decisions to redeem, it strengthens the incentive to redeem for those investors with the most at stake from a decline in a fund's value, which increases the chance of unfair investor dilution in contravention of a core principle of the Investment Company Act. We continue to believe that a floating NAV will, for institutional prime funds, reduce the impact of the first mover advantage associated with money market funds' current valuation and pricing practices and thus is consistent with our obligation to seek to prevent investor dilution of fund shares (as discussed in more detail in the section below).

A few commenters also suggested that shareholders in a floating NAV fund would have the same incentive to redeem if a floating NAV fund deviates far enough from the typical historical range for market-based pricing, particularly if they believe the fund may continue to drop in value.[471] We note, however, that the floating NAV reform, one part of our broader

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to an alternative investment is \$1.0000 – \$0.99995 = \$0.00005.

470 We discuss the costs associated with institutional investors transferring between investment alternatives in section III.K.3.

471 *See, e.g.*, Federated IV Comment Letter (arguing that, unlike a stable NAV fund, shareholders may have a greater incentive to redeem from a declining floating NAV fund because shareholders would "realize" the small declines in value); Chamber II Comment Letter.

reforms to money market funds, is designed to address a particular structural incentive that exists as a result of existing valuation and pricing methodologies under rule 2a-7. As we stated in our proposal and in this Release, the floating NAV reform is not intended to deter redemptions that constitute rational risk management by shareholders or that reflect a general incentive to avoid loss.

Several commenters argued that shareholders may choose not to redeem from a stable NAV money market fund during times of stress to avoid contributing to the likelihood that their fund breaks the buck.[472] Although this may be the case for some shareholders, as shown during the financial crisis, other shareholders do redeem from stable value money market funds, regardless of the impact on the fund.[473] It is the actions of those shareholders that have led to our re-evaluation of the appropriateness of exempting all money market funds from the valuation and pricing provisions that apply to all other mutual funds.

One commenter also argued that rule 2a-7 already places a number of detailed remedial obligations on the board of a money market fund, in the event a credit event occurs, that are designed to prevent any first mover advantage related to money market funds' current valuation and pricing methods.[474] This commenter discussed, for example, the existing requirement that fund boards periodically calculate the fund's shadow price and take action in the event it deviates from the market-based NAV per share by more than 50 basis points. We note, however, that the floating NAV reform is designed to proactively address a structural feature of money market funds that may incentivize heavy redemptions in times of market stress (and the resulting

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472 *See, e.g.*, Wells Fargo Comment Letter; Ropes & Gray Comment Letter; ICI Comment Letter.

473 *See supra* section II.

474 *See* Federated IV Comment Letter.

shareholder inequities) *before* a significant credit event occurs or the fund re-prices its shares using market-based values (*i.e.*, breaks the buck). Under current rule 2a-7, there remains a first mover advantage until the fund breaks the buck and re-prices its shares using market-based valuations. One commenter also noted that any reduction in the incentive to redeem early from the fund's stable pricing would be marginal and contingent upon the type of stress experienced.[475] We note that the floating NAV reform is targeted towards the funds that have been most susceptible to heavy redemptions in the past. We believe that the risks associated with these funds have shown that the first mover advantage that results from current rule 2a-7's valuation and pricing methods needs to be addressed. This is particularly true in light of the Investment Company Act mandate to ensure that investors are treated fairly and the impact that the first mover advantage has on investor dilution.

Finally, a number of commenters suggested that the evidence of heavy redemptions in European floating NAV money market funds and U.S. ultra-short bond funds during 2008, taken together, may be the best means available to predict whether a floating NAV will reduce shareholder incentives to redeem shares in times of stress.[476] These commenters suggest, therefore, that a floating NAV alone likely would not stop investors from redeeming shares.[477] We recognize that many European floating NAV money market funds and U.S. ultra short bond funds experienced heavy redemptions during the financial crisis.[478] We note that, as discussed

475 *See* ABA Business Law Section Comment Letter.

476 *See, e.g.*, Federated IV Comment Letter; HSBC Comment Letter.

477 *See supra* note 475 and accompanying text.

478 As we discussed in the Proposing Release, we understand that many European floating NAV money market funds are priced and managed differently than floating NAV funds (as we proposed, and as adopted today). We also noted that Europe has several different types of money market funds, all of which can take on more risk than U.S. money market funds as they are not currently subject to regulatory restrictions on their

above, the floating NAV reform is not intended to wholly prevent heightened redemptions or deter redemptions that constitute rational risk management by shareholders or that reflect a general incentive to avoid loss. Instead, our floating NAV reform is intended to address the incremental incentive to redeem created by money market funds' current valuation and pricing methods (and not incentives to redeem that relate to flights to quality and liquidity) and that exacerbates shareholder dilution.

b. Risks of Investor Dilution

As discussed earlier, one of the Commission's most significant concerns when originally providing the exemption permitting the use of amortized cost valuation and penny rounding pricing for money market funds was to minimize the risks of investor dilution.[479] A primary principle underlying the Investment Company Act is that sales and redemptions of redeemable securities should be effected at prices that are fair and do not result in dilution of shareholder interests or other harm to shareholders.[480] Absent an exemption, a mutual fund must sell and redeem its redeemable securities only at a price based on its current net asset value, which equals

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credit quality, liquidity, maturity, and diversification as stringent as those imposed under rule 2a-7. Finally, we noted in the Proposing Release that empirical analysis yields different opinions on whether floating NAV funds, as compared with stable NAV funds, are less susceptible to run-like behavior. *See* Proposing Release, *supra* note 25, at section III.A.1.d. Accordingly, we note that the fact that some ultra-short bond funds and European floating NAV funds experienced heavy redemptions during the financial crisis does not necessarily suggest that investors in floating NAV money market funds (as adopted today) also would redeem heavily in a financial crisis.

479 *See* Proposing Release, *supra* note 25.

480 *See* Investment Trusts and Investment Companies: Hearings on S.3580 before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. 136-38 (1940) (hearings that preceded the enactment of the Company Act). In addition, all funds must accurately calculate their net asset values to ensure the accuracy of their payment of asset-based fees, such as investment advisory fees, as well as the accuracy of their reported performance. Statement Regarding "Restricted Securities," Investment Company Act Release No. 5847 (Oct. 21, 1969).

the value of the fund's total assets minus the amount of the fund's total liabilities.[481] A mutual fund generally must value its assets at their market value, in the case of securities for which market quotations are readily available, or at fair value, as determined in good faith by the fund's board of directors, in the case of other securities and assets.[482]

A fund that prices and transacts in fund shares valued at amortized cost value and rounded to the nearest penny poses a risk of dilution of investor shares because investors may redeem for the stable value of their shares even where the underlying market value of the fund's portfolio may be less. If such a redemption occurs, the value of the remaining shareholders' shares can be diluted, as remaining shareholders effectively end up paying redeeming shareholders the difference between the stable value and the underlying market value of the fund's assets.[483] This result is illustrated in the example provided in the Proposing Release, where we discussed how redeeming shareholders can concentrate losses in a money market fund.[484]

This risk of dilution is magnified by the "cliff effect" that can occur if a stable value fund is required to re-price its shares. If, due to heavy redemptions, losses embedded in a fund's

481 Rule 22c-1. When calculating its net asset value for purposes of rule 22c-1: (i) an open-end fund adds up the current values of all of its assets (using their market values or fair values, as appropriate), which reflect any unrealized gains; and (ii) subtracts all of its liabilities, which include any federal income tax liability on any unrealized gains. If the open-end fund understates a liability, among other consequences, the price at which the fund's redeemable securities are redeemed will be higher, so that redeeming shareholders will receive too much for their shares while the net asset value of shares held by the remaining shareholders may be reduced correspondingly when the full amount of the liability must be paid.

482 Rule 2a-4; *see also* section 2(a)(41) defining the term "value."

483 *See* TIAA-CREF Comment Letter ("Allowing investors to transact at daily using amortized pricing in times of stress could lead to dilution of the remaining investors' shares as the first redeemers in a run on a money market fund would get a higher valuation for their shares based on amortized cost than would subsequent redeemers.").

484 *See* Proposing Release, *supra* note 25, at section II.B.1.

portfolio cause it to re-price its shares from its stable value, remaining money market fund investors will receive at most 99 cents for every share remaining, while redeeming investors received the full $1.00, even if the market value of the fund's portfolio had not changed. In a mutual fund that transacts using a floating NAV, this cliff effect is minimized because (assuming pricing to four decimal places) the "cliff" is a 1/100th the size compared to when a money market fund is priced using penny rounding. In other words, in a floating NAV fund the risk of investor dilution is far less, in part, because the cliff occurs earlier and is significantly smaller (at $0.9999 cents, or one hundred times sooner and smaller than a stable value fund that drops from $1.00 to 99 cents). Thus, the "cliff effect" is significantly mitigated in a floating NAV fund that prices and rounds share prices to four decimal places.

As we discuss in more detail below, applying a floating NAV only to institutional investors investing in prime funds and allowing retail investors to continue to invest in a stable value product recognizes the historical differences between these types of investors, and cordons off some of the risks, reducing the chance that heavy redemptions by institutions will result in disruption or material dilution of retail investors' shares.[485] We also recognize that institutional investors are not always similarly situated, with some institutions having more or less investment at risk, resources to monitor their investments, tolerance for losses, or proclivity to redeem, which makes certain institutional investors less likely to be among the first movers.[486] A floating NAV should also help reduce the risks of material dilution to this subset of institutional

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485 *See infra* section III.C.2; *see also* Schwab Comment Letter (agreeing that segregating institutional investors from retail investors would "reduce the chance that retail investors, who tend to be slower to react to market events, will absorb a disproportionate share of the losses if a fund breaks the buck.").

486 *See, e.g.*, ABA Business Law Comment Letter ("It is more likely, however, that larger institutions have greater analytical resources than other institutional investors, such as small pension plans and companies.").

investors, as it will reduce the first mover advantage associated with current rule 2a-7's valuation and pricing methods, which can prompt heavy redemptions and can have the effect of diluting the shares of slower-to-redeem institutional investors.[487]

A floating NAV might also prompt investors who are the least tolerant of losses, and thus the most likely to redeem early to avoid a decline in a fund's NAV per share, to shift into other investment products, such as government money market funds or other stable value products that may more appropriately match their risk profile. Such a shift would further reduce the risks of dilution for the remaining investors, mitigating the chances that rapid heavy redemptions will result in negative outcomes for these funds and their investors.

We recognize that our liquidity fees and gates reforms also address the risks of dilution to some extent. However, fees and gates may not address the incentives that cause rapid heavy redemptions to occur in certain money market funds in the first place (although they should help manage the results). They also are not primarily designed to address the risks associated with deviations in a fund's NAV caused by portfolio losses or other credit events; rather, they are designed to ensure that investors pay the costs of their liquidity and allow funds time to manage heavy redemptions. A floating NAV requires redeeming investors to receive only their fair share of the fund when there are embedded losses in the portfolio (avoiding dilution of remaining shareholders), even in cases where the fund has sufficient liquidity such that fees or gates would not be permitted. We believe that the risks associated with institutional prime money market funds–including the incentives associated with the first mover advantage that results from current

[487] Several commenters supported our belief that a floating NAV treats shareholders more equitably than under current rule 2a-7. *See, e.g.*, Deutsche Comment Letter; TIAA-CREF Comment Letter; Systemic Risk Council Comment Letter.

rule 2a-7's valuation and pricing methods, and associated heavy redemptions that can worsen a decline in a fund's stable NAV–are significant enough that they need to be addressed through the targeted reform of a floating NAV.

c. Enhanced Allocation of Principal Volatility Risk

Today, the risks associated with the principal volatility of a money market fund's portfolio securities can be obscured by the pricing and valuation methods that allow these funds to maintain a stable NAV. In non-money market funds, investors may look to historical principal volatility as an indicator of fund risk because changes in the principal may be the dominant source of the total return.[488] Historical principal volatility in money market funds may not have been as fully appreciated by investors, because they do not experience any principal volatility unless the fund breaks the buck (even if such volatility has in fact occurred).[489]

Some commenters suggested, and we agree, that transacting at prices based on current market values means that institutional investors who invest in floating NAV funds will be more aware of, and willing to tolerate, occasional fluctuations in fund share prices (largely resulting from volatility in principal that had been previously obscured).[490] This may result in more efficient allocation of risk through a "sorting effect" whereby institutional investors in prime funds either remain in a floating NAV money market fund and accept the risks of regular

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488 Mutual funds earn money through dividend payments, capital gains distributions (increases in the price of the fund's portfolio securities), and increased NAV. *See* SEC Office of Investor Education and Advocacy, *Mutual Funds, A Guide for Investors* (Aug. 2007), available at http://www.sec.gov/investor/pubs/sec-guide-to-mutual-funds.pdf. Money market fund investors may be more likely to focus on the other components of total return in a fund, such as interest or dividends.

489 Such principal volatility may be even less apparent if the fund's sponsor provides support for the fund. *See supra* section II.B.4.

490 *See, e.g.* Vanguard Comment Letter.

principal volatility[491] or move their assets into alternative investment products better suited to their actual risk tolerance.[492] Accordingly, the shareholders who remain in institutional prime money market funds must be prepared to experience gains and losses in principal on a regular basis, which may result in those remaining investors being less likely to redeem at the first sign that a money market fund may experience such principal volatility.

Some commenters recognized that making principal gains and losses more apparent to investors could recalibrate investors' perceptions of the risks inherent in money market funds.[493] A number of commenters argued, however, that institutional investors who invest in money market funds that will be subject to a floating NAV are well aware of the risks of money market funds and that money market fund shares may fluctuate in value.[494] But contrary to institutional investors' purported existing knowledge of those risks, when the reality of potential principal losses became more apparent during the financial crisis, many of them redeemed heavily from

491 We acknowledge, however, that although we expect money market fund shares priced to four decimal places likely will fluctuate on a somewhat regular basis, they are not likely to fluctuate daily primarily due to the high quality and short duration of the fund's underlying portfolio securities. A few commenters argued that a floating NAV will not necessarily inform investors because NAVs may not fluctuate much. *See, e.g.*, Federated IV Comment Letter; HSBC Comment Letter; ICI Comment Letter. Our staff estimates, based on a historical analysis of money market fund shadow prices, that money market funds would have floated just over 50% of the time if priced to four decimal places. *See infra* note 502 and accompanying text.

492 *See, e.g.* Vanguard Comment Letter ("The reason the floating NAV would mitigate the risk of disruptive shareholder redemptions in institutional prime MMFs is that the process of moving from a stable NAV to a floating NAV will force the shareholders of those funds, which tend to be concentrated with professional investors who cannot withstand any share price movement, into different investment vehicles. The shareholders who remain will have a greater tolerance for loss, making them less likely to flee at the first sign of stress.").

493 *See, e.g.*, Schwab Comment Letter; Fin. Svcs. Roundtable Comment Letter; Boston Federal Reserve Comment Letter.

494 *See, e.g.*, Federated IV Comment Letter (citing to comments submitted on the FSOC Proposed Recommendations); Hanson *et al.* Comment Letter. Commenters also noted that investors already understand that money market funds can "break the buck." *See, e.g.*, Comment Letter of OFI Global Asset Management, Inc. (Sept. 17, 2013) ("Oppenheimer Comment Letter"); Dreyfus Comment Letter; UBS Comment Letter; Wells Fargo Comment Letter; Comment Letter of Key Bank, NA (Sept. 16, 2013) ("Key Bank Comment Letter").

money market funds.[495] Our floating NAV reform, by requiring that investors experience any gains or losses in principal when they transact in money market fund shares, will more fully reveal the risk from changes in the fund's principal value to shareholders.

Finally, some commenters also suggested that enhanced disclosure (including daily website reporting of shadow NAVs), rather than a floating NAV, would be a more efficient and less costly way to achieve the same goal.[496] We agree that daily disclosure of funds' shadow NAVs does improve visibility of risk to some degree, by making the information about NAV fluctuations available to investors should they choose to seek it out. But the mere availability of this information cannot provide the same effect that is provided by institutions experiencing actual fluctuations in the value of their investments (or acknowledging, through their investment in a fully disclosed floating NAV investment product, their willingness to accept daily fluctuations in share price value), which will be provided by a floating NAV.

4. *Money Market Fund Pricing*

Having determined to adopt the floating NAV reform for institutional prime funds, there is a separate (albeit related) issue of how to price the shares for transactions. Today, for the reasons discussed previously in this section, we are amending rule 2a-7 to eliminate the exemption that currently permits institutional prime funds to maintain a stable NAV through

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495 Some commenters agreed with this view. *See, e.g.*, American Bankers Ass'n Comment Letter; Angel Comment Letter.

496 *See, e.g.*, Federated IV Comment Letter; ICI Comment Letter; J.P. Morgan Comment Letter; SIFMA Comment Letter; Chamber II Comment Letter. A few commenters suggested that money market funds be required to transact in fund shares to the same level of precision as disclosed on fund websites, which is the approach that we are adopting today. *See, e.g.*, Fidelity Comment Letter (stating that money market funds should disclose (on fund websites) the NAV to the same precision as it prices its shares for transactions in order to avoid arbitrage opportunities based on asymmetry of information).

amortized cost valuation and/or penny rounding pricing.[497] We are also adopting, as proposed, an additional requirement that these money market funds value their portfolio assets and price fund shares by rounding the fund's current NAV to four decimal places in the case of a fund with a $1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (e.g., a money market fund with a $10 target share price could price its shares at $10.000).[498] Accordingly, the final amendments change the rounding convention for money market funds that are required to adopt a floating NAV—from penny rounding (i.e., to the nearest one percent) to "basis point" rounding (i.e., to the nearest 1/100th of one percent), which is a more precise standard than other mutual funds use today.

We proposed to require that institutional prime funds use basis point rounding and we noted that basis point rounding appeared to be the level of sensitivity that would be required if gains and losses were to be regularly reflected in the share price of money market funds in all market environments, including relatively stable market conditions. We also noted that this level of precision may help more effectively inform investor expectations regarding the floating nature of their shares.[499] In money market funds today, there is no principal volatility unless the fund breaks the buck, and thus this indicator of risk may not have always been readily apparent.[500]

As discussed in the Proposing Release, we considered, as an alternative to the basis point

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497 As discussed further below, under our final rule amendments, government and retail money market funds will be permitted to use the amortized cost method and/or penny-rounding method to maintain a stable price per share as they do today.

498 *See* rule 2a-7(c)(1)(ii). Mutual funds that are not relying on the exemptions provided by rule 2a-7 today are required to price and transact in fund shares rounded to a minimum of 1/10th of 1 percent, or three decimal places. *See* ASR 219, *supra* note 5.

499 *See* Proposing Release, *supra* note 25, at section III.A.2.

500 Some commenters recognized that making gains and losses more apparent to investors could help recalibrate investors' perceptions of the risks inherent in money market funds. *See, e.g.*, Schwab Comment Letter; Fin Svcs. Roundtable Comment Letter; Boston Federal Reserve Comment Letter.

rounding requirement that we are adopting today (which is a condition for relying on rule 2a-7 for institutional prime money market funds), requiring institutional prime funds to price and transact in fund shares at a precision of 1/10th of one percent (which is typically the equivalent of three decimal places at $10.00 share price) ("10 basis point rounding"), like other mutual funds. But in the Proposing Release, we noted our concern that 10 basis point rounding may not be sufficient to ensure that investors can regularly observe the investment risks that are present in money market funds, particularly if funds manage themselves in such a way that their NAVs remain constant or nearly constant.[501]

In considering whether to require basis point rounding or, instead, to allow 10 basis point rounding, we have looked to the potential for price fluctuations under the two approaches. Based on our staff analysis of Form N-MFP data between November 2010 and November 2013, 53% of money market funds have fluctuated in price over a twelve-month period with a NAV priced using basis point rounding, compared with less than 5% of money market funds that would have fluctuated in price using 10 basis point rounding.[502] We recognize that, either way, this limited fluctuation in prices is the result of the nature of money market fund portfolios, whose short duration and/or high quality generally results in fluctuations in value primarily when there is a credit deterioration or other significant market event.[503] Because of the nature of money market fund portfolios, pricing with the accuracy of basis point rounding should better reflect the nature of money market funds as an investment product by regularly showing market gains and losses

501 *See supra* note 491.

502 Our staff has updated its analysis from the discussion in the Proposing Release. *See* Proposing Release, *supra* note 25, at section III.A.2 and n.164.

503 *See, e.g.*, Comment Letter of Arnold & Porter LLP on behalf of Federated Investors (Elimination of the Use of Amortized Cost Method of Valuation by Stable Value Money Market Funds) (Sept. 16, 2013) ("Federated VI Comment Letter").

in an institutional prime money market fund's portfolio.[504]

After considering the results of the staff's analysis, we are persuaded to require basis point rounding. We believe that some of the institutional investors in these funds may not appreciate the risk associated with money market funds.[505] As for this subset of institutional investors, we believe that the basis point rounding requirement may accentuate the visibility of the risks in money market funds by causing these shareholders to experience gains and losses when the funds' value fluctuates by 1 basis point or more.[506] We further believe this may, in turn, have two potential effects that are consistent with our overall goal of addressing features in money market funds that can make them susceptible to heavy redemption. First, to the extent that some of these investors become more aware of the risks, they may develop an increased risk tolerance that could help make them less prone to run.[507] Second, by helping make the risk more

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504 *See* HSBC Comment Letter.

505 To be sure, this may not generally include the more sophisticated institutional investors who have professional financial experts advising them and carefully monitoring their investments. *See, e.g.*, Federated IV Comment Letter (citing to comments submitted on the FSOC Proposed Recommendations; Hanson *et al.* Comment Letters). But within the class of institutional investors, we understand that there are many less sophisticated investors—e.g., smaller, closely held corporations—who rely on money market funds to manage their cash flow but who are not fully aware of the risks and the potential for loss.

506 *See, e.g.*, Report of the President's Working Group on Financial Markets, *Money Market Fund Reform Options* (Oct. 2010) ("PWG Report"), *available at* http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf, at 22 ("Investors' perceptions that MMFs are virtually riskless may change slowly and unpredictably if NAV fluctuations remain small and rare. MMFs with floating NAVs, at least temporarily, might even be more prone to runs if investors who continue to see shares as essentially risk-free react to small or temporary changes in the value of their shares."); Comment Letter of Federated Investors, Inc. (May 19, 2011) (available in File No. 4-619) ("Federated May 2011 Comment Letter") (stating that "managers would employ all manners of techniques to minimize the fluctuations in their funds' NAVs" and, therefore, "[i]nvestors would then expect the funds to exhibit very low volatility, and would redeem their shares if the volatility exceeded their expectations"). As discussed above, we believe that our floating NAV reform improves the allocation of risk and should result in better-informed investors that, by choosing to invest in a floating NAV, appreciate and are willing to tolerate the risks of principal volatility, even if those fluctuations do not occur on a daily basis. *See supra* section III.B.3.c.

507 Several commenters agreed with this position. *See, e.g.*, Comment Letter of Eric S. Rosengren, President, Federal Reserve Bank of Boston, et al. (Sept. 12, 2013) ("Fed Bank President Comment Letter") ("We

apparent through periodic price fluctuations, basis point rounding may help signal to those investors who cannot tolerate the risk associated with the fluctuating NAV that they should migrate to other investment options, such as government funds.[508] Because basis point rounding is, as the staff's study demonstrated, more likely to produce price fluctuations than 10 basis point rounding, we believe it is more likely to have these desired effects.[509]

a. Other Considerations

We recognize that 10 basis point rounding would provide certain benefits. For example, it could provide consistency in pricing among all floating NAV mutual funds and this could reduce investors' incentives to reallocate assets into other potentially riskier floating NAV mutual funds (*e.g.*, ultra-short bond funds) that some commenters suggested may appear to present less volatility. A number of commenters argued for this alternative, suggesting that money market funds should not be required to use a more precise rounding convention than what is required of other mutual funds.[510]

Notwithstanding these potential benefits, as discussed above we believe there are

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agree with the SEC's position that a floating NAV requirement, if properly implemented, could recalibrate investors' perception of the risks inherent in a fund by 'making gains and losses a more regularly observable occurrence'."); HSBC Comment Letter.

508 *See, e.g.,* Fed Bank President Comment Letter ("Because a constant NAV MMMF generally draws risk-averse investors, it is likely that given an appropriate transition period, the investor base would either change or become more tolerant of NAV fluctuations, lowering the chance of destabilizing runs.").

509 We are concerned that, were we to adopt 10 basis point rounding, institutional prime money market funds would not regularly float during normal market times, in which case certain institutional investors may not fully appreciate that the investment has risks and they might thus invest in the product despite their lower risk tolerance. *See, e.g.*, PWG Report, *supra* note 506, at 10 ("Investors have come to view MMF shares as extremely safe, in part because of the funds' stable NAVs and sponsors' record of supporting funds that might otherwise lose value. MMFs' history of maintaining stable value has attracted highly risk-averse investors who are prone to withdraw assets rapidly when losses appear possible.")

510 *See, e.g.*, BlackRock II Comment Letter; Legg Mason & Western Asset Comment Letter; Fidelity Comment Letter.

sufficient countervailing considerations that make it appropriate to require basis point rounding for institutional prime money market funds. Further, we are requiring this additional level of precision because institutional prime money market funds are distinct from other mutual funds in their regulatory structure, purpose, and investor risk tolerance, as well as the risks they pose of investor dilution and to well-functioning markets. Accordingly, we believe on balance that it is appropriate to require these money market funds to use a more precise pricing and rounding convention than used by other mutual funds.

Some commenters also argued that enhanced disclosure (including daily website reporting of shadow NAVs), would be a more efficient and less costly way to achieve the same goal.[511] We agree that daily disclosure of funds' shadow NAVs does improve visibility of risk to some degree, by making the information about NAV fluctuations available to investors should they choose to seek it out. But we are skeptical that, as to the subset of institutional investors who are less aware of the risks, the mere availability of this information can provide the same level of impact than is provided by actually experiencing fluctuations in the investment value (or acknowledging, through these investors' investment in a fully disclosed floating NAV investment product, their willingness to accept daily fluctuations in share price value), which will be provided by a floating NAV priced using basis rounding. In a similar vein, one commenter suggested that, as an alternative to a floating NAV, we consider a modified penny-rounding pricing method whereby a money market fund would be permitted to calculate an unrounded NAV once each day and therefore, absent a significant market event, use the previous

511 *See, e.g.*, Federated IV Comment Letter; ICI Comment Letter; J.P. Morgan Comment Letter; SIFMA Comment Letter; Chamber II Comment Letter.

day's portfolio valuation for any intraday NAV calculations.[512] Under this approach, money market funds would disclose their basis-point rounded price, but only transact at the penny-rounded price.[513] Although we recognize that such an approach would likely retain the efficiencies associated with amortized cost valuation, this alternative is not without other risks, including the use of potentially stale valuation data. More significantly, unlike our floating NAV reform, this alternative does not address the first-mover advantage or risks of investor dilution discussed above.[514]

Several commenters argued that basis point rounding is an artificial means to increase the volatility of floating NAV funds and would mislead investors by exaggerating the risks of investing in money market funds compared to ultra-short bond funds, and suggested that instead we should adopt 10 basis point rounding.[515] For example, one commenter noted that basis point rounding is so sensitive that it might produce price distinctions among funds that result merely from the valuation model used by a pricing service, rather than from a difference in the intrinsic value of the securities ("model noise").[516] We do not believe that basis point rounding will mislead investors, nor do we believe that price changes at the fourth decimal place will generally be a result of "model noise" rather than reflecting changes in the market value of the fund's

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512 *See* Comment Letter of Federated Investors, Inc. (Nov. 6, 2013); *see also* Comment Letter of Arnold & Porter LLP on behalf of Federated Investors (July 16, 2014). We note that this alternative, if combined with fees and gates, is very similar to the fees and gates alternative we proposed (which included a requirement for penny-rounded pricing). We discuss why we have chosen not to adopt that alternative in section III.L.1.

513 *Id.*

514 *See supra* section III.B.3.

515 *See, e.g.*, Schwab Comment Letter; Stradley Ronon Comment Letter; SIFMA Comment Letter; Legg Mason & Western Asset Comment Letter; Fidelity Comment Letter.

516 *See* Goldman Sachs Comment Letter.

portfolio.[517] We note that today many money market funds are voluntarily disclosing their shadow price with basis point rounding, and they are prohibited from doing so if the shadow price was misleading to investors. Funds have also been required to report their shadow NAVs to us on Form N-MFP priced to the fourth decimal place since the inception of the form, and we have found the shadow NAVs priced at this level useful and relevant in our risk monitoring efforts. For example, reporting of shadow prices to four decimal places provides a level of precision (as compared with three decimal place rounding) needed for our staff to fully evaluate and monitor the impact of credit events on money market fund share prices.[518]

Some commenters also stated that ultra-short bond funds priced using 10 basis point rounding might appear less volatile than money market funds priced using basis point rounding.[519] As a result, these commenters noted what they viewed as the undesirable effect that investors might be incentivized to move their assets into ultra-short bond funds that have similar investment parameters to money market funds but are not required to adhere to the risk-limiting conditions of rule 2a-7.[520] Based on our staff analysis of Morningstar data between November 2010 and November 2013, 100% of ultra-short bond funds have fluctuated in price over a twelve-month period with a NAV priced using 10 basis point rounding, compared with 53% of

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517 *See, e.g.*, HSBC Comment Letter (noting that basis point rounding would "better reflect gains and losses" than 3 decimal place rounding).

518 Basis point precision will also enable our staff to monitor the effect of shifts in interest rates on money market fund share prices (particularly in more regular market conditions).

519 *See, e.g.*, BlackRock II Comment Letter; Stradley Ronon Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter.

520 We note that other features of ultra-short bond funds may counter this incentive, including that they are generally not a cash equivalent for accounting purposes and their less favorable tax treatment than what the Treasury Department and IRS have proposed and issued today. *See infra* section III.B.6.

money market funds that would have fluctuated in price using basis point rounding.[521] Accordingly, we do not believe that it is likely investors will view ultra-short bond funds as less volatile than money market funds priced using basis point rounding. We also note, however, that because floating NAV money market funds and ultra-short bond funds invest in different securities and are subject to different regulatory requirements (including risk-limiting conditions), investors may consider these factors when evaluating the risk profile of these different investment products.[522] Existing disclosure requirements, along with the amendments to money market fund disclosure requirements we are adopting today, are designed to help investors understand these differences and the associated risks.

b. Implementation of Basis Point Rounding

One commenter noted that basis point rounding "should be relatively straightforward for the industry to accommodate."[523] A number of commenters, however, objected to our proposed amendment to require that floating NAV money market funds price and transact their shares at the fourth decimal place. Commenters stated that pricing and transacting at four decimal places (as opposed to reporting only their shadow price at four decimal places) would be operationally expensive and overly burdensome because money market fund systems are typically designed for processing all mutual funds,[524] which generally process and record transactions rounded to the

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521 Using Morningstar data, our staff analyzed the monthly NAV fluctuations of 54 active ultra-short bond fund share classes during November 2010 and November 2013. The money market fund data was obtained using Form N-MFP data. *See supra* note 502 and accompanying text.

522 As discussed in *infra* section III.B.6, the Treasury Department and the IRS will issue today a revenue procedure that exempts from the wash sale rule dispositions of shares in any floating NAV money market fund. This exemption does not apply to ultra-short bond funds.

523 Comment Letter of Interactive Data Corporation (Sept. 17, 2013) ("Interactive Data Comment Letter").

524 *See supra* note 500.

nearest penny (which is typically the equivalent of three decimal places at a $10.00 share price).[525] We acknowledge that money market funds, intermediaries, and shareholders will likely incur significant costs in order to modify their systems to accommodate pricing and transacting in fund shares rounded to four decimals. We discuss these costs in section III.B.8.a below. We understand, however, that because virtually all mutual funds (including money market funds), regardless of price, round their NAV to the nearest penny, these system change costs will be incurred if we require money market funds to float their NAV, regardless of whether we require the use of basis point rounding (unless funds were to re-price to $10.00 per share).[526]

A few commenters also noted that although basis point rounding may convey the risk of a floating NAV to investors more clearly by reflecting very small fluctuations in value, it does so at a significant cost—increasing the tax and accounting burdens associated with the realized gains and losses that would result from more frequent changes in a money market fund's NAV per share.[527] As discussed in section III.B.6.a below, however, the Treasury Department and IRS

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525 *See, e.g.*, BlackRock II Comment Letter; Invesco Comment Letter; Schwab Comment Letter; Legg Mason & Western Asset Comment Letter; ICI Comment Letter.

526 We understand that virtually all systems round to the nearest penny when processing fund share transactions. *See* ICI Comment Letter. Accordingly, if a money market fund continued to be priced at a dollar, even if rounded to the third decimal place, we understand that similar significant systems changes would be necessary to transact and report in fund shares priced at $1.000. We note that money market funds would be able to avoid these costs and move floating NAV money market funds to existing mutual fund systems by re-pricing fund shares to $100.00 per share, under a basis point rounding requirement. *See id.* We recognize that such a transition might create other costs, such as proxy solicitation if the fund's charter prohibits such a re-pricing and potential investor resistance to using a cash management product that prices based on a $100.00 initial share price. *See id.* (noting that basis point rounding would be workable (without significant costs) if money market funds moved to a $100.00 price per share, but suggesting that investors would be unlikely to use a cash management product priced at this level). We agree with this commenter that it is unlikely that investors would invest in a money market fund that implements an initial $100.00 share price in a floating NAV money market fund. If a money market fund chose to do so, we estimate that each fund would incur one-time proxy solicitation costs of $100,000. *See infra* note 735 and accompanying text.

527 *See, e.g.*, BlackRock II Comment Letter; UBS Comment Letter.

are today proposing a new regulation that would permit investors to elect to use a "simplified aggregate mark-to-market method" to determine annual realized gains or losses and therefore eliminate the need to track purchase and sale transactions. Therefore, it is unlikely that there will be increased operational burdens that result from tax or accounting costs associated with more frequent realized gains or losses.[528]

c. Economic Analysis

Under our final amendments, and as we proposed, institutional prime funds will round prices and transact in fund shares to four decimal places in the case of a fund with a $1.00 target share price (*i.e.*, $1.0000) or an equivalent or more precise level of accuracy for money market funds with a different share price. During normal market conditions, rounding prices and transacting in fund shares at four decimal places will provide investors an opportunity to better understand the risks of institutional prime funds as an investment option and will provide investors with improved transparency in pricing. This should positively affect competition. During times of stress, it will reduce much of the economic incentive for shareholders to redeem shares ahead of other investors at a stable net asset value when the market value of portfolio holdings fall and will reduce shareholder dilution.. As such, the risk of heavy share redemptions should decrease, and shareholders will be treated more equitably as they absorb their proportionate share of gains, losses, and costs. In addition, rounding prices and transacting in fund shares at four decimal places may help to further reduce the incentive for shareholders to redeem shares ahead of other investors by helping less informed investors better understand the

528 As discussed in section III.B.6.a.i, however, investors are likely to incur additional, although small, realized gains and/or losses as a result of more frequent fluctuations in the share price under a floating NAV priced to four decimal places.

inherent risks in money market funds. As such, the risk of heavy share redemptions may decrease as investors experience greater information efficiency and allocative efficiency by better understanding the risks more closely and directing their investments accordingly. Reducing the risk of heavy share redemptions by removing the first-mover advantage should promote capital formation by making money market funds a more stable source of financing for issuers of short-term credit instruments. We recognize, however, that as discussed below in section II.K, to the extent that money flows out of institutional prime floating NAV funds and into alternative investment vehicles, capital formation may be adversely affected.

5. *Amortized Cost and Penny Rounding for Stable NAV Funds*

As discussed above, all money market funds that are not subject to our targeted floating NAV reform may continue to price fund shares as they do today and use the amortized cost method to value portfolio securities.[529] This approach differs from our 2013 proposal, in which we proposed to eliminate the use of the amortized cost method of valuation for all money market funds. At that time, we stated that amortized cost valuation or penny rounding pricing alone effectively provides the same 50 basis points of deviation from a fund's shadow price before the fund must "break the buck" and re-price its shares. Accordingly, and in light of the fact that, under our proposal, all money market funds (including stable NAV funds) would be required to disclose on a daily basis their fund share prices with their portfolios valued using market-based factors (rather than amortized cost), we proposed to eliminate the use of amortized cost for stable

529 Stable NAV money market funds may also choose to use the penny rounding method of pricing fund shares. Under our amendments, government and retail money market funds will be permitted to maintain a stable NAV. *See infra* sections III.C.1 and III.C.2.

NAV funds (but to continue to permit penny rounding pricing).[530]

A number of commenters objected to eliminating amortized cost valuation for stable NAV funds.[531] Most significantly, commenters argued that prohibiting the use of amortized cost valuation would hinder money market funds' ability to provide for intraday purchases and redemptions and same-day settlement because of the increased time required to strike a market-based price.[532] One commenter noted, for example, that if a money market fund prices at the close of the New York Stock Exchange, the fund may not be able to complete the penny rounding process, wire redemption proceeds, and settle fund trades before the close of the Fedwire.[533] Commenters also argued that substituting penny rounding pricing for amortized cost valuation would increase costs and operational complexity without providing corresponding benefits.[534] A few commenters also suggested that, in assessing whether to eliminate amortized

530 *See* Proposing Release, *supra* note 25, at section III.A.3.

531 *See generally* BlackRock II Comment Letter; Dreyfus Comment Letter; Federated VI Comment Letter; Wells Fargo Comment Letter; SIFMA Comment Letter. A number of commenters suggested that amortized cost is an appropriate valuation method for money market funds because the characteristics of typical portfolio holdings (*i.e.*, high quality, short duration, and typically held-to-maturity) result in minimal differences between a money market fund's NAV calculated using amortized cost and a fund's market-based NAV. *See, e.g.*, Legg Mason & Western Asset Comment Letter; UBS Comment Letter; Chamber II Comment Letter. Commenters also suggested that amortized cost valuation may increase objectivity and consistency across the fund industry because money market instruments do not often trade in the secondary markets and therefore the market-based prices may be less reliable. *See, e.g.*, Federated VI Comment Letter; Goldman Sachs Comment Letter; Legg Mason & Western Asset Comment Letter.

532 *See, e.g.*, Federated VI Comment Letter (suggesting that it would take a minimum of three to four hours to strike a market-based NAV (assuming there are no technology problems), compared with as little as one hour for a fund using penny-rounded pricing and amortized cost valuation). *See also, e.g.*, Legg Mason & Western Asset Comment Letter; SunGard Comment Letter; UBS Comment Letter; ICI Comment Letter; BlackRock II Comment Letter.

533 *See* Federated VI Comment Letter.

534 *See, e.g.*, Federated VI Comment Letter (noting that June 2012 survey data from Form N-MFP filings shows that approximately 72% of prime money market fund assets had maturities of less than 60 days). As a result, this commenter suggests that substituting penny rounding for amortized cost imposes disproportionately high costs without incremental benefits because a large portion of fund portfolios will continue to use amortized cost under current Commission guidance. *See also, e.g.*, Legg Mason & Western Asset Comment Letter; SunGard Comment Letter; UBS Comment Letter; ICI Comment Letter.

cost valuation for securities that mature in more than 60 days, we should consider the broader systemic implications of a potential shift in money market fund portfolio holdings towards securities that mature within 60 days (in order to avoid the need to use market-based values).[535]

We no longer believe that, as we stated in the Proposing Release, there would be little additional cost to funds if we eliminated amortized cost valuation (and permitted only penny rounding) for all money market funds (including stable NAV money market funds). Our belief was, in part, based on the fact that, as proposed (and as we are adopting today), all money market funds would be required to post on their websites daily shadow prices (determined using market-based values) rounded to four decimal places. Because, under our proposal money market funds would be required to obtain daily market-based valuations in order to post daily shadow prices to fund websites, we believed that funds would have this information readily available (and therefore not require the use of amortized cost). Notwithstanding this, commenters noted, however, the ability to use amortized cost valuation provides a significant benefit to money market funds when compared to penny rounding pricing—the ability to provide intraday liquidity to shareholders in a cost-effective and efficient manner. We agree with commenters that eliminating amortized cost valuation would likely hinder the ability of funds to provide frequent intraday liquidity to shareholders and may impose unnecessary costs and operational burdens on stable NAV money market funds. This is particularly true in light of the fact that under existing regulatory restrictions and guidance, a material intraday fluctuation would still have to be recognized in fair valuing the security. We therefore believe that eliminating

535 *See, e.g.*, Stradley Ronon Comment Letter; SIFMA Comment Letter. As discussed in this section, we are not eliminating, as proposed, the use of amortized cost valuation for stable NAV money market funds under our final amendments.

amortized cost valuation in the context of stable NAV funds would be contrary to a primary goal of our rulemaking—to preserve to the extent feasible, while protecting investors and the markets, the benefits of money market funds for investors and the short-term funding markets by retaining a stable NAV alternative.

Accordingly, we are not adopting the proposed amendments that would prohibit stable NAV money market funds from using amortized cost to value portfolio securities. Rather, under the final amendments, stable NAV funds may continue to price fund shares as they do today, using the amortized cost method to value portfolio securities and/or the penny rounding method of pricing. Given the continued importance of amortized cost valuation under our final rules, we are providing expanded valuation guidance related to the use of amortized cost and other related valuation matters in section III.D.

6. *Tax and Accounting Implications of Floating NAV Money Market Funds*

a. <u>Tax Implications</u>

In the Proposing Release, we discussed two principal tax consequences of requiring certain money market funds to implement a floating NAV, potentially causing shareholders to experience taxable gains or losses. First, under tax rules applicable at the time of the Proposing Release, floating NAV money market funds (or their shareholders) would be required to track the timing and price of purchase and sale transactions in order to determine and report capital gains or losses. Second, floating NAV funds would be subject to the "wash sale" rule, which postpones the tax benefit of losses when shareholders sell securities at a loss and, within 30 days before or after the sale, buy substantially identical securities. These tax consequences generally do not exist today, because purchases and sales of money market fund shares at a stable $1.00 share price do not generate gains or losses. Because we are today adopting the floating NAV requirement for certain money market funds as part of our reforms, we have continued to analyze the related tax effects. As discussed below, the Treasury Department and IRS will address these tax concerns to remove almost all tax-related burdens associated with our floating NAV requirement.

i. Accounting for Net Gains and Losses

As we discussed in the Proposing Release, we expected taxable investors in floating NAV money market funds, like taxable investors in other types of mutual funds, to experience gains and losses. Accordingly, we expected shareholders in floating NAV money market funds to owe tax on any realized gains, to receive tax benefits from any realized losses, and to be required to determine those amounts. However, because it is not possible to predict the timing of shareholders' future transactions and the amount of NAV fluctuations, we were not able to estimate with any specificity the amount of any increase or decrease in shareholders' tax burdens. Because we expect that investors in floating NAV money market funds will experience relatively small fluctuations in value, and because many money market funds may qualify as retail and government money market funds, any changes in tax burdens likely would be minimal.

In the Proposing Release, we also noted that tax rules generally require mutual funds or intermediaries to report to the IRS and shareholders certain information about sales of shares, including sale dates and gross proceeds. If the shares sold were acquired after January 1, 2012, the fund or intermediary would also have to report basis and whether any gain or loss is long or short term.[536] At the time of the Proposing Release, Treasury regulations excluded sales of stable

[536] The new reporting requirements (often referred to as "basis reporting") were instituted by section 403 of the Energy Improvement and Extension Act of 2008 (Division B of Pub. L. No. 110–343) (26 U.S.C. 6045(g), 6045A, and 6045B); *see also* 26 CFR 1.6045–1; Internal Revenue Service Form 1099-B. These

value money market funds from this transaction reporting obligation.[537] We noted that mutual funds and intermediaries (and, we anticipated, floating NAV money market funds) are not required to make reports to certain shareholders, including most institutional investors. The regulations call these shareholders "exempt recipients."[538]

We have been informed that the Treasury Department and the IRS today will propose new regulations to make all money market funds exempt from this transaction reporting requirement, and the exemption is to be formally applicable for calendar years beginning on or after the date of publication in the Federal Register of a Treasury Decision adopting those proposed regulations as final regulations. Importantly, the Treasury Department and the IRS have informed us that the text of the proposed regulations will state that persons subject to transaction reporting may rely on the proposed exemption for all calendar years prior to the final regulations' formal date of applicability. Therefore, the Treasury and IRS relief described above is available immediately.

We noted in the Proposing Release our understanding that the Treasury Department and the IRS were considering alternatives for modifying forms and guidance: (1) to include net transaction reporting by the funds of realized gains and losses for sales of all mutual fund shares; and (2) to allow summary income tax reporting by shareholders. Many commenters argued that this potential relief does not go far enough and noted that, because institutions are exempt recipients, these investors would still incur costs to build systems to track and report their own

new basis reporting requirements and the pre-2012 reporting requirements are collectively referred to as "transaction reporting."

537 *See* 26 CFR 1.6045–1(c)(3)(vi).

538 *See* 26 CFR 1.6045–1(c)(3)(i).

basis information and calculate gains and losses.[539] We recognized in the Proposing Release the limitations of this potential tax relief.

We have been informed that the Treasury Department and the IRS today will propose new regulations that will provide more comprehensive and effective relief than the approaches described in the Proposing Release. These regulations will, as suggested by one commenter,[540] make a simplified aggregate method of accounting available to investors in floating NAV money market funds and are proposed to be formally applicable for taxable years ending after the publication in the Federal Register of a Treasury Decision adopting the proposed regulations as final regulations. Importantly, the Treasury Department and the IRS have informed us that the text of the proposed regulations will state that taxpayers may rely on the proposed rules for taxable years ending on or after the date that the proposed regulations are published in the Federal Register. That is, because investors may use this method of accounting before final regulations are published, the Treasury Department and IRS relief is available as needed before then.

The simplified aggregate method will allow money market fund investors to compute net capital gain or loss for a year by netting their annual redemptions and purchases with their annual starting and ending balances. Importantly, for shares in floating NAV money market funds, the simplified aggregate method will enable investors to determine their annual net taxable gains or losses using information that is currently provided on shareholder account statements and—most

539 *See, e.g.*, BlackRock II Comment Letter; Schwab Comment Letter; ICI Comment Letter.

540 *See* Comment Letter of George C. Howell, III, Hunton & Williams LLP, on behalf of Federated Investors (Tax Compliance Issues Created by Floating NAV) (May 1, 2014) ("Federated XII Comment Letter") (suggesting that a "mark to market" tax accounting method would meaningfully resolve the more significant tax issue (as compared with "wash sale" provisions) resulting from the floating NAV reform).

important—will eliminate any requirement to track individually each share purchase, each redemption, and the basis of each share redeemed. We expect that the simplified aggregate method will significantly reduce the burdens associated with tax consequences of the floating NAV requirement because funds will not have to build new tracking and reporting systems and shareholders will be able to calculate their tax liability using their existing shareholder account statements, rather than tracking the basis for each share. We have also considered the effect of this relief on the tax-related burdens associated with accounting for net gains and losses in our discussion of operational implications below.[541]

The Treasury Department and IRS have informed us of their intention to proceed as expeditiously as possible with the process of considering comments and issuing final regulations regarding the simplified aggregate method of accounting for floating NAV money market funds. We note that money market funds and their shareholders may begin using the simplified method of accounting as needed before the regulations are finalized. Were the Treasury Department and IRS to withdraw or materially limit the relief in the proposed regulations, the Commission would expect to consider whether any modifications to the reforms we are adopting today may be appropriate.

ii. Wash Sales

As discussed in the Proposing Release, the "wash sale" rule applies when shareholders sell securities at a loss and, within 30 days before or after the sale, buy substantially identical securities.[542] Generally, if a shareholder incurs a loss from a wash sale, the loss cannot be

541 *See infra* section III.B.8.

542 *See* 26 U.S.C. 1091.

recognized currently and instead must be added to the basis of the new, substantially identical securities, which postpones the loss recognition until the shareholder recognizes gain or loss on the new securities.[543] Because many money market fund investors automatically reinvest their dividends (which are often paid monthly), virtually all redemptions by these investors would be within 30 days of a dividend reinvestment (*i.e.*, purchase) and subject to the wash sale rule.

Subsequent to our proposal, the Treasury Department issued for comment a proposed revenue procedure under which redemptions of floating NAV money market fund shares that generate losses below 0.5% of the taxpayer's basis in those shares would not be subject to the wash sale rule (*de minimis* exception).[544] Many commenters noted, however, that the *de minimis* exception to the wash sale rule does not mitigate the tax compliance burdens and operational costs that would be required to establish systems capable of identifying wash sale transactions, determining if they meet the *de minimis* criterion, and adjusting shareholder basis when they do not.[545]

We understand that these concerns will not be applicable to floating NAV money market funds. First, under the simplified aggregate method of accounting described above, taxpayers will compute aggregate gain or loss for a period, and gain or loss will not be associated with any particular disposition of shares. Thus, the wash sale rule will not affect any shareholder that chooses to use the simplified aggregate method. Second, for any shareholder that does not use the simplified aggregate method, the Treasury Department and the IRS today will release a

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543 *Id.*

544 *See* IRS Notice 2013-48, Application of Wash Sale Rules to Money Market Fund Shares (proposed July 3, 2013), available at http://www.irs.gov/pub/irs-drop/n-13-48.pdf.

545 *See, e.g.*, ICI Comment Letter; BlackRock II Comment Letter; Schwab Comment Letter.

revenue procedure that exempts from the wash sale rule dispositions of shares in any floating NAV money market fund. This wash-sale tax relief will be available beginning on the effective date of our floating NAV reforms (60 days after publication in the Federal Register). We have also considered the effect of this relief from the tax-related burdens associated with the wash sale rule in our discussion of operational implications below.[546]

b. Accounting Implications

In the Proposing Release, we noted that some money market fund shareholders may question whether they can treat investments in floating NAV money market funds as "cash equivalents" on their balance sheets. As we stated in the Proposing Release, and as we discuss below, it is the Commission's position that, under normal circumstances, an investment in a money market fund with a floating NAV under our final rules meets the definition of a "cash equivalent."[547]

Many commenters agreed with our position regarding the treatment of investments in floating NAV money market funds as cash equivalents.[548] Most of these commenters, however, suggested that the Commission issue a more formal pronouncement and/or requested that FASB and GASB codify our position.[549] A few commenters suggested that our floating NAV requirement raises uncertainty about whether floating NAV money market fund shares could

546 *See infra* section III.B.8.

547 *See supra* section III.A.7 for a discussion of accounting implications related to the liquidity fees and gates aspect of our final rules.

548 *See, e.g.*, BlackRock II Comment Letter; Fidelity Comment Letter; Deloitte Comment Letter; Ernst & Young Comment Letter.

549 *See, e.g.*, ICI Comment Letter; BlackRock II Comment Letter; Fidelity Comment Letter. We do not have authority over the actions that GASB may or may not take with respect to local government investment pools ("LGIPs"). *See infra* section III.C.4.

continue to be classified as cash equivalents,[550] and one commenter disagreed and suggested that it is likely that under present accounting standards investors would have to classify investments in shares of floating NAV money market funds as trading securities or available-for-sale securities (rather than as a cash equivalent).[551] We have carefully considered commenters' views and, for the reasons discussed below, our position continues to be that an investment in a floating NAV money market fund under our final rules, under normal circumstances, meets the definition of a "cash equivalent." A more formal pronouncement (as requested by some commenters) is not required because the federal securities laws provide the Commission with plenary authority to set accounting standards, and we are doing so here.[552] We reiterate our position below.[553]

The adoption of a floating NAV alone for certain rule 2a-7 funds will not preclude shareholders from classifying their investments in money market funds as cash equivalents, under normal circumstances, because fluctuations in the amount of cash received upon redemption would likely be small and would be consistent with the concept of a 'known' amount of cash. As already exists today with stable share price money market funds, events may occur that give rise to credit and liquidity issues for money market funds so that shareholders would need to reassess if their investments continue to meet the definition of a cash equivalent.

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550 *See, e.g.*, J.P. Morgan Comment Letter; Northern Trust Comment Letter; Boeing Comment Letter.

551 *See,* Federated X Comment Letter (citing to Statement on Financial Accounting Standards No. 115); *see also infra* note 429 and accompanying text.

552 The federal securities laws provide the Commission with authority to set accounting and reporting standards for public companies and other entities that file financial statements with the Commission. *See, e.g.*, 15 U.S.C. 77g, 77s, 77aa(25) and (26); 15 U.S.C. 78c(b), 78l(b) and 78m(b); section 8, section 29(e), section 30, and section 37(a) of the Investment Company Act.

553 We are also amending the Codification of Financial Reporting Policies to reflect our interpretation under U.S. GAAP, as discussed below. *See infra* section VI.

7. *Rule 10b-10 Confirmations*

Rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act") addresses broker-dealers' obligations to confirm their customers' securities transactions.[554] Under Rule 10b-10(a), a broker-dealer generally must provide customers with information relating to their investment decisions at or before the completion of a securities transaction.[555] Rule 10b-10(b), however, provides an exception for certain transactions in money market funds that attempt to maintain a stable NAV and where no sales load or redemption fee is charged. The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly basis (subject to certain conditions) in lieu of immediate confirmations for all purchases and redemptions of shares of such funds.[556]

Because share prices of institutional prime money market funds likely will fluctuate, absent exemptive relief, broker-dealers will not be able to continue to rely on the current exception under Rule 10b-10(b) for transactions in floating NAV money market funds.[557] Instead, broker-dealers will be required to provide immediate confirmations for all such transactions. We note, however, that contemporaneous with this Release, the Commission is providing notice and requesting comment on a proposed order that, subject to certain conditions, would grant exemptive relief from the immediate confirmation delivery requirements of Rule

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554 17 CFR 240.10b-10.

555 17 CFR 240.10b-10(a).

556 17 CFR 240.10b-10(b).

557 *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 Fed. Reg. 36834, 36934 (June 19, 2013); *see also* Exchange Act rule 10b-10(b)(1), (limiting alternative monthly reporting to money market funds that attempt[] to maintain a *stable net asset value*) (emphasis added).

10b-10 for transactions effected in shares of any open-end management investment company registered under the Investment Company Act that holds itself out as a money market fund operating in accordance with rule 2a-7(c)(1)(ii).[558]

In the Proposing Release, we requested comment on whether, if the Commission adopted the floating NAV requirement, broker-dealers should be required to provide immediate confirmations to all institutional prime money market fund investors. Commenters generally urged the Commission not to impose such a requirement, arguing that there would be significant costs associated with broker-dealers providing immediate confirmations.[559] Commenters noted that there would be costs of implementing new systems to generate confirmations and ongoing costs related to creating and sending trade-by-trade confirmations.[560] We estimate below the costs to broker-dealers associated with providing securities transaction confirmations for floating NAV money market funds.[561]

We believe that the initial one-time cost to implement, modify, or reprogram existing systems to generate immediate confirmations (rather than monthly statements) will be approximately $96,650 on average per affected broker-dealer, based on the costs that the Commission has estimated in a similar context of developing internal order and trade management systems so that a registered security-based swap entity could electronically process

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558 *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. 34-72658 (July 23, 2014) ("Notice of Proposed Exemptive Order").

559 *See* ICI Comment Letter; SIFMA Comment Letter at Appendices 1 and 2; Dreyfus Comment Letter; Federated X Comment Letter.

560 *See, e.g.*, Federated X Comment Letter.

561 Broker-dealers may not incur all of these costs if the exemptive relief we propose today is adopted.

transactions and send trade acknowledgments.[562] In addition, we estimate that 320 broker-dealers that are clearing customer transactions or carrying customer funds and securities would be affected by this requirement because they would likely be the broker-dealers responsible for providing trade confirmations.[563] As a result, the Commission estimates initial costs of $30,928,000 for providing immediate confirmations for shareholders in institutional prime money market funds.[564]

To estimate ongoing costs of providing immediate confirmations, one commenter stated that, based on the data it had gathered, the median estimated ongoing annual cost associated with confirmation statements would constitute between 10% and 15% of the initial costs.[565] To be conservative, we have estimated that the ongoing annual costs would constitute 15% of the initial costs. Applying that figure to the initial costs, the Commission estimates ongoing annual costs of $4,639,200 for providing immediate confirmations for shareholders in institutional prime

562 This estimate is based on the following: [(Sr. Programmer (160 hours) at $285 per hour) + (Sr. Systems Analyst (160 hours) at $251 per hour) + (Compliance Manager (10 hours) at $294 per hour) + (Director of Compliance (5 hours) at $426 per hour) + (Compliance Attorney (20 hours) at $291 per hour)] = $96,650 per broker-dealer. *See* Trade Acknowledgement and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727, 76 Fed Reg. 3859, 3871 n.81 (Jan. 21, 2011). (We note that the original estimate in the Trade Acknowledgment release contained a technical error in the calculation stating a cost of $66,650 instead of $96,650 for a security-based swap entity.) A SIFMA survey also indicates that the costs are likely to be below $500,000 per firm. *See* SIFMA Comment Letter, at Appendices 1 and 2. According to this commenter, after surveying its members, it found that the vast majority of respondents estimated that initial costs associated with providing confirmation statements would fall below $500,000. However, based on the data provided, it was unclear at what level below $500,000 its members considered to be the actual cost and whether the firms were a representative sample (*e.g.*, in terms of size and sophistication) of the type of firms that would be affected.

563 Based on FOCUS Report data as of December 31, 2013, the Commission estimates that there are approximately 320 broker-dealers that are clearing or carrying broker-dealers that do not claim exemptions pursuant to paragraph (k) of Exchange Act rule 15c3-3. Because not all of these clearing or carrying broker-dealers would necessarily provide rule 10b-10 confirmations to customers of institutional prime money market funds, the Commission anticipates that this is a conservative estimate of the number of clearing or carrying broker-dealers that would provide trade confirmations to customers in money market funds subject to the floating NAV requirement.

564 This estimate is based on the following: $96,650 x 320 firms = $30,928,000.

565 *See* SIFMA Comment Letter, at Appendices 1 and 2.

money market funds.[566]

The Commission notes that benefits related to the immediate trade confirmation requirements under Rule 10b-10 with respect to institutional prime money market funds are difficult to quantify as they relate to the additional value to investors provided by having more timely confirmations with respect to funds that we expect will experience relatively small fluctuations in value. While the Commission did not receive any comments regarding these potential benefits, given that institutional prime money market funds likely will fluctuate in price, some investors may find value in receiving information relating to their investment decisions at or before the completion of a securities transaction.[567]

8. *Operational Implications of Floating NAV Money Market Funds*

a. Operational Implications to Money Market Funds and Others in the Distribution Chain

In the Proposing Release, we stated that we expect that money market funds and transfer agents already have laid the foundation required to use floating NAVs because they are required under rule 2a-7 to have the capacity to redeem and sell fund shares at prices based on the funds' current NAV pursuant to rule 22c-1 rather than $1.00, *i.e.*, to transact at the fund's floating NAV.[568] Intermediaries, although not subject to rule 2a-7, typically have separate obligations to investors with regard to the distribution of proceeds received in connection with investments

566 This estimate is based on the following: $30,928,000 x 15% = $4,639,200.

567 The Commission acknowledges that shareholders that invest in institutional prime money market funds will continue to have extensive investor protections separate and apart from the protections provided under rule 10b-10, including that (1) funds subject to the floating NAV requirement will continue to be subject to the "risk-limiting" conditions of rule 2a-7, and (2) information on prices will be available through other means (for example, under the new fund disclosure requirements of Investment Company Act Rule 2a-7(h)(10), investors will be able to access a fund's daily market-based NAV per share on a money market fund's website). *See* Notice of Proposed Exemptive Order, at 6-7.

568 *See* current rule 2a-7(c)(13). *See also* 2010 Adopting Release, *supra* note 17, at nn.362-363.

made or assets held on behalf of investors.[569] We also noted that before the Commission adopted the 2010 amendments to rule 2a-7, the ICI submitted a comment letter detailing the modifications that would be required to permit funds to transact at the fund's floating NAV.[570]

Commenters noted, as we recognized in the Proposing Release, however, that some funds, transfer agents, intermediaries, and others in the distribution chain may not currently have the capacity to process constantly transactions at floating NAVs, as would be required under our proposal.[571] Accordingly, consistent with our views reflected in the Proposing Release and as discussed below, we continue to expect that sub-transfer agents, fund accounting departments, custodians, intermediaries, and others in the distribution chain would need to develop and overlay additional controls and procedures on top of existing systems in order to implement a floating NAV on a continual basis.[572] In each case, the procedures and controls that support the

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569 *See, e.g.*, 2010 Adopting Release, *supra* note 17, at nn.362-363. Examples of intermediaries that offer money market funds to their customers include broker-dealers, portals, bank trust departments, insurance companies, and retirement plan administrators. *See* INVESTMENT COMPANY INSTITUTE, OPERATIONAL IMPACTS OF PROPOSED REDEMPTION RESTRICTIONS ON MONEY MARKET FUNDS , at 13 (2012), *available at* http://www.ici.org/pdf/ppr_12_operational_mmf.pdf ("ICI Operational Impacts Study").

570 *See, e.g.*, Comment Letter of the Investment Company Institute (Sept. 8, 2009) (available in File No. S7-11-09) ("ICI 2009 Comment Letter") (describing the modifications that would be necessary if the Commission adopted the requirement, currently reflected in rule 2a-7(c)(13), that money market funds (or their transfer agents) have the capacity to transact at a floating NAV, to: (i) fund transfer agent recordkeeping systems (*e.g.*, special same-day settlement processes and systems, customized transmissions, and reporting mechanisms associated with same-day settlement systems and proprietary systems used for next day settlement); (ii) a number of essential ancillary systems and related processes (*e.g.*, systems changes for reconciliation and control functions, transactions accepted via the Internet and by phone, modifying related shareholder disclosures and phone scripts, education and training for transfer agent employees and changes to the systems used by fund accountants that transmit net asset value data to fund transfer agents); and (iii) sub-transfer agent/recordkeeping arrangements (explaining that similar modifications likely would be needed at various intermediaries).

571 *See, e.g.*, ICI Comment Letter; Comment Letter of Chapin Davis, Inc. (Aug. 28, 2013) ("Chapin Davis Comment Letter"); Federated IV Comment Letter.

572 Even though a fund complex's transfer agent system is the primary recordkeeping system, there are a number of additional subsystems and ancillary systems that overlay, integrate with, or feed to or from a fund's primary transfer agent system, incorporate custom development, and may be proprietary or vendor dependent (*e.g.*, print vendors to produce trade confirmations). *See* ICI Operational Impacts Study, *supra*

accounting systems at these entities would have to be modified to permit those systems to calculate a money market fund's floating NAV periodically each business day and to communicate that value to others in the distribution chain on a permanent basis.

Some commenters noted that our floating NAV requirement would adversely affect cash sweep programs, in which customer cash balances are automatically "swept" into investments in shares of money market funds (usually through a broker-dealer or other intermediary). For example, one commenter suggested that sweep programs cannot accommodate a floating NAV because such programs are predicated on the return of principal.[573] Another commenter suggested that the substantial cost and complexity associated with intraday pricing makes it likely that many intermediaries will discontinue offering floating NAV institutional prime money market funds as sweep options, and instead turn to alternative investment products, including stable NAV government funds.[574] Although we do not know to what extent, if at all, intermediaries will continue to offer sweep accounts for floating NAV money market funds, we acknowledge that there are significant operational costs involved in order to modify sweep platforms to accommodate a floating NAV product. Accordingly, we anticipate that sweep account assets currently invested in institutional prime money market funds will likely shift into

note 569, at 20. The systems of sub-transfer agents and other parties may also require modifications related to the floating NAV requirement. We have included these anticipated modifications in our cost estimates below.

573 *See, e.g.*, ICI Comment Letter. Another commenter noted that the sweep investment product is only feasible in the current stable-NAV environment because the client knows at the time of submitting the purchase order how many shares it has purchased, and how many shares it will receive the next day upon redemption, absent a break-the-buck event. *See* State Street Comment Letter.

574 *See, e.g.*, Wells Fargo Comment Letter (acknowledging that, as we stated in the Proposing Release, sweep products may continue to be viable for floating NAV money market funds because fund sponsors and other intermediaries will make modifications to price fund shares periodically during the day, but suggesting that the costs for broker-dealers to reprogram their systems would be significant and the operational complexity could be made worse to the extent that fund sponsors do not standardize the times of day at which they price shares).

government funds that will maintain a stable NAV under our final rules. We discuss in the Macroeconomic Effects section below potential costs related to a migration of assets away from floating NAV funds into alternative investments, including stable NAV money market funds such as government funds. Because the amount of sweep account assets currently invested in institutional prime money market funds is not reported to us, nor are we aware of such information in the public domain, we are not able to provide a reasonable estimate of the amount of sweep account assets that may shift into alternative investment products.

In the Proposing Release, we also estimated additional costs under our floating NAV reform that would be imposed on money market funds and other recordkeepers to track portfolio security gains and losses, provide "basis reporting," and monitor for potential wash-sale transactions. As discussed above, we have been informed that, today, the Treasury Department and the IRS will propose new regulations that will eliminate the need for money market funds and others to track portfolio gains and losses and basis information, as well as issue today a revenue procedure that exempts money market funds from the wash-sale rules. Accordingly, our cost estimates for the floating NAV reform have been revised from our proposal to reflect this fact.[575]

We understand that the costs to modify a particular entity's existing controls and procedures will vary depending on the capacity, function and level of automation of the accounting systems to which the controls and procedures relate and the complexity of those systems' operating environments.[576] Procedures and controls that support systems that operate in

575 *See supra* section III.B.8.a.

576 *See, e.g.*, Chamber I Comment Letter.

highly automated operating environments will likely be less costly to modify while those that support complex operations with multiple fund types or limited automation or both will likely be more costly to change. Because each system's capabilities and functions are different, an entity will likely have to perform an in-depth analysis of the new rules to calculate the costs of modifications required for its own system. While we do not have the information necessary to provide a point estimate[577] of the potential costs of modifying procedures and controls, we expect that each entity will bear one-time costs to modify existing procedures and controls in the functional areas that are likely to be impacted by the floating NAV reform.

In the Proposing Release, we estimated that the one-time costs of implementation for an affected entity would range from \$1.2 million (for entities requiring less extensive modifications) to \$2.3 million (for entities requiring more extensive modifications) and that the annual costs to keep procedures and controls current and to provide continuing training would range from 5% to 15% of the one-time costs.[578] In addition, we noted that we expect money market funds (and their intermediaries) would incur additional costs associated with programs and systems modifications necessary to provide shareholders with access to information about the floating NAV per share online, through automated phone systems, and on shareholder statements and to explain to shareholders that the value of their money market funds shares will fluctuate.[579] We

577 We are using the term "point estimate" to indicate a specific single estimate as opposed to a range of estimates.

578 *See* Proposing Release, *supra* note 25, nn.285-86 and accompanying text. We estimated that these costs would be attributable to the following activities: (i) drafting, integrating, and implementing procedures and controls; (ii) preparation of training materials; and (iii) training. As noted throughout this Release, we recognize that adding new capabilities or capacity to a system (including modifications to related procedures and controls) will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of initial costs of building or expanding a system.

579 *See id.* at n.287 and accompanying text. We expect these costs would include software programming

estimated that the costs for a fund (or its transfer agent) or intermediary that may be required to perform these activities would range from $230,000 to $490,000 and that the ongoing costs to maintain automated phone systems and systems for processing shareholder statements would range from 5% to 15% of the one-time costs.[580] In sum, we estimated that the total range of one-time implementation costs to money market funds and others in the distribution chain would be approximately $1,430,000 to $2,790,000 per entity, with ongoing costs that range between 5% to 15% of these one-time costs.[581]

Commenters did not generally disagree with the type and nature of costs that we estimated will be imposed by our floating NAV reform. One commenter noted that the costs required to make the necessary systems changes would not be prohibitive and could be completed within two to three years.[582] A number of commenters, however, provided a wide range of estimated operational costs to money market funds, intermediaries, and others in the distribution chain. These commenters suggested that estimated one-time implementation costs would be between $350,000 to $3,000,000, depending on the affected entity.[583] One commenter

modifications, as well as personnel costs that would include training and scripts for telephone representatives to enable them to respond to investor inquiries.

580 *See id.* at n.288 and accompanying text. We estimate that these costs would be attributable to the following activities: (i) project assessment and development; (ii) project implementation and testing; and (iii) written and telephone communication. *See also supra* note 578.

581 This estimate is calculated as follows: less extensive modifications ($1,200,000 + $230,000 = $1,430,000); more extensive modifications ($2,300,000 + $490,000 = $2,790,000).

582 *See* HSBC Comment Letter.

583 *See* Chamber II Comment Letter (citing Treasury Strategies, Operational Implications of a Floating NAV across Money Market Fund Industry Key Stakeholders (Summer 2013) ("TSI Report")). This commenter estimated costs for various intermediaries in order to implement a floating NAV: Corporate treasury management system vendors ($350,000 - $400,000); fund accounting service providers ($400,000 - $425,000); broker-dealers and portals ($500,000 - $600,000); transfer agent systems ($2,000,000 - $2,500,000); and sweep account software providers ($2,000,000 - $3,000,000). Another commenter estimated that it would cost approximately $2,000,000 in one-time costs for a large trust group to implement a floating NAV. *See* Treasury Strategies Comment Letter.

estimated that it could cost up to $2,300,000 per fund, transfer agent, or intermediary, to modify systems procedures and controls to implement a floating NAV.[584] Another commenter estimated that it would cost each back office processing service provider $1,725,000 in one-time costs to implement a floating NAV.[585] We also received from commenters some cost estimates provided on a fund complex level. Two fund complexes estimated their total one-time costs to implement a floating NAV to be between $10,000,000 to $11,000,000, and one of the largest money market fund sponsors approximated its one-time costs to be $28,000,000. Averaged across the number of money market funds offered, these one-time implementation costs range from $306,000 to $718,000.[586] Another commenter provided survey data stating that 40% of respondents (asset managers and intermediaries) estimated that it would cost $2,000,000 to $5,000,000 in one-time costs to implement a floating NAV.[587] Finally, a few commenters estimated the one-time costs to the entire fund industry related to implementing our floating NAV reform.[588]

We estimated in the Proposing Release that it would cost each money market fund,

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584 *See* Federated II Comment Letter.

585 *See* Fin. Info. Forum Comment Letter.

586 *See* Federated X Comment Letter (estimating its one-time costs to implement a floating NAV to be $11,200,000); Schwab Comment Letter (estimating its one-time costs to implement a floating NAV to be $10,000,000); Fidelity Comment Letter (estimating its one-time costs of implement a floating NAV to be $28,000,000). Based on Form N-MFP data as of February 28, 2014, the per fund costs are: Federated $311,000 ($11,200,000 ÷ 36 money market funds); Schwab $588,000 ($10,000,000 ÷ 17 money market funds); and Fidelity $718,000 ($28,000,000 ÷ 39 money market funds).

587 *See* SIFMA Comment Letter (stating that another 20% of survey respondents estimated that one-time implementation costs for a floating NAV would be between $5,000,000 to $15,000,000). Because we do not have access to the names of the survey respondents or their specific cost estimates, we are unable to approximate these costs on a per fund basis.

588 *See, e.g.*, TSI Report (estimating $1.8 to $2.0 billion in total upfront costs for U.S. institutional money market fund investors to modify operations in order to comply with a floating NAV requirement); Angel Comment Letter (estimating $13.7 to $91.5 billion in initial upfront costs related to implementing a floating NAV reform). As discussed above, we have analyzed a variety of commenter estimates and provided cost estimates on a per-fund basis. We are unable, however, to verify the accuracy or make a relevant comparison between our per-fund cost estimates and the broad range of costs provided by these commenters that apply to all U.S. institutional money market fund investors and/or the entire fund industry.

intermediary, and other participant in the distribution chain approximately $1,430,000 (for less extensive modifications) to $2,790,000 (for more extensive modifications) in one-time costs to implement a floating NAV.[589] Based on staff analysis and experience, we are revising the estimated operational costs for our floating NAV reform downward by 15% to reflect the tax relief discussed above.[590] In addition, as discussed above (and, in a change from our proposal), our final rules will permit retail and government money market funds to continue to maintain a stable NAV as they do today and to use amortized cost valuation and/or penny-rounding pricing. A number of commenters noted that eliminating the ability of stable NAV funds to use amortized cost valuation, as we proposed, would impose significant operational costs on these funds.[591] Accordingly, based on staff analysis and experience, we are also revising the estimated operational costs downward by 5% to reflect the ability of stable NAV funds to continue to use amortized cost valuation as they do today. We therefore estimate that it will cost each money market fund, intermediary, and other participant in the distribution chain approximately $1,144,000 (for less extensive modifications) to $2,232,000 (for more extensive modifications) in one-time costs to implement the floating NAV reform.[592]

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589 *See supra* note 581.

590 *See supra* section III.B.6.a. We note that many commenters suggested that a primary drawback (and cost) of our floating NAV reform is the substantial operational costs associated with complying with tax tracking requirements in a floating NAV fund. *See, e.g.*, Fin. Svcs. Roundtable Comment Letter; Federated IV Comment Letter; Fidelity Comment Letter. Although we attribute a 15% reduction in estimated operational costs to tax-related costs, the cost savings could be higher or lower than our estimate.

591 *See supra* note 534.

592 This estimate is calculated as follows: $1,430,000 x 80% = $1,144,000 (less extensive modifications); $2,790,000 x 80% = $2,232,000 (more extensive modifications). A few commenters also noted that our floating NAV requirement would also result in significant lost management fees. *See, e.g.*, Federated X Comment Letter (suggesting that a shift of one-third of assets away from institutional prime funds would result in annual lost management fees of approximately $578 million for money market fund advisers nationwide). We acknowledge that, to the extent there is a significant outflow of assets from the institutional prime funds into non-money market funds as a result of the floating NAV requirement, money

We believe that this range of estimated costs generally fits within the range of costs suggested by commenters as described above (after accounting for estimated costs savings related to tax relief and the increased availability of amortized cost valuation, not contemplated by commenters in their estimates). We note, however, that many money market funds, transfer agents, custodians, and intermediaries in the distribution chain may not bear the estimated costs on an individual basis and therefore will likely experience economies of scale. Accordingly, we expect that the cost for many individual entities that would have to process transactions at a floating NAV will likely be less than these estimated costs.[593]

In addition to the estimated one-time implementation costs, we estimate that funds, intermediaries, and others in the distribution chain will incur annual operating costs of approximately 5% to 15% of initial costs. Accordingly, we estimate that funds and other intermediaries will incur annual operating costs as a result of the floating NAV reform that range from $57,200 to $334,800.[594] Most commenters that addressed this issue directly did not disagree with our estimate of ongoing costs, although we note that a few commenters estimated the new annual operating costs to the entire fund industry related to implementing our floating NAV reform.[595] One commenter provided survey data showing that 66% of respondents (asset

market fund managers may experience declines in management fee income. We discuss the possibility of such shifts in money market fund assets in our discussion of macroeconomic effects below.

593 For example, the costs will likely be allocated among the multiple users of affected systems, such as money market funds that are members of a fund group, money market funds that use the same transfer agent or custodian, and intermediaries that use systems purchased from the same third party.

594 This estimate is calculated as follows: less extensive modifications = $57,200 ($1,144,000 x 5%); more extensive modifications = $334,800 ($2,232,000 x 15%).

595 *See, e.g.*, Chamber II Comment Letter (estimating $2.0 to $2.5 billion in new annual operating costs relating to the FNAV reform). As discussed above, most commenters did not specifically object to our estimated range of ongoing costs on a per-fund basis. We do not, however, have information available to us to evaluate the accuracy of cost estimates to the entire fund industry or make a meaningful comparison

managers and intermediaries) estimated that annual costs would approximate 10% to 15% of initial costs.[596] Another commenter, however, disagreed with our estimate of annual operating costs of approximately 5% to 15% of initial costs and suggested that the annual costs to fund sponsors will actually be close to the costs of initial implementation. We disagree. This commenter noted that most of the ongoing cost would result from the elimination of amortized cost accounting (generally) and more frequent price calculations using market-based factors.[597] Because stable NAV money market funds may continue to use amortized cost valuation under our final rules (unlike our proposal), we believe this commenter has overstated the ongoing costs under our final rules.[598] Therefore, we believe consistent with the comments received, that it is more appropriate to continue to estimate the ongoing operational costs as approximately 5% to 15% of the initial implementation costs and are not revising the ongoing cost estimates from our proposal.

b. Operational Implications to Money Market Fund Shareholders

In addition to money market funds and other entities in the distribution chain, each money market fund shareholder will also likely be required to analyze our floating NAV proposal and its own existing systems, procedures, and controls to estimate the systems

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of such estimates with our per-fund cost ongoing cost estimates.

596 *See* SIFMA Comment Letter.

597 *See* Federated X Comment Letter (noting, however, that it estimates annual operating costs of approximately \$231,000 per fund (\$5.7 million for pricing services + \$1.5 million for transfer agent services + \$2.5 million for technology, training, and other monitoring costs = \$9.7 million ÷ 42 money market funds managed by Federated = approximately \$231,000 per fund). This estimate is consistent with our estimated range of ongoing costs. *See supra* note 594.

598 We recognize, however, that under our final rules, floating NAV money market funds will incur increased costs as a result of the elimination of amortized cost valuation. These costs, discussed above, are significantly lower than those that funds would incur under our proposal (that would have eliminated amortized cost valuation for all money market funds, including those funds not subject to our floating NAV reform).

modifications it would be required to undertake. Because of this, and the variation in systems currently used by institutional money market fund shareholders, we do not have the information necessary to provide a point estimate of the potential costs of systems modifications. We describe below the types of activities typically involved in making systems modifications and estimate a range of hours and costs that we anticipate will be required to perform these activities. We sought comment in the Proposing Release regarding the potential costs of system modifications for money market fund shareholders, and the comments we received, along with the differences between our proposal and the final rules, have informed our estimates.

In the Proposing Release, we prepared ranges of estimated costs, taking into account variations in the functionality, sophistication, and level of automation of money market fund shareholders' existing systems and related procedures and controls, and the complexity of the operating environment in which these systems operate. In deriving our estimates, we considered the need to modify systems and related procedures and controls related to recordkeeping, accounting, trading, and cash management, and to provide training concerning these modifications. We estimated that a shareholder whose systems (including related procedures and controls) would require less extensive modifications would incur one-time costs ranging from $123,000 to $253,000, while a shareholder whose systems (including related procedures and controls) would require more extensive modifications would incur one-time costs ranging from $1.4 million to $2.9 million.[599]

Most commenters did not disagree with our cost estimates. One commenter stated that it

599 We estimate that these costs would be attributable to the following activities: (i) planning, coding, testing, and installing system modifications; (ii) drafting, integrating, implementing procedures and controls; (iii) preparation of training materials; and (iv) training.

expects at least 50% of institutional investors in money market funds will require some systems development to be able to invest in a floating NAV money market fund. This commenter also noted that having sufficient time to implement the changes is a more important factor than cost in determining the extent to which corporate treasurers, for example, would use a floating NAV fund product.[600] Another commenter acknowledged our range of estimated costs and suggested that while these estimates may not appear substantial at first glance, when viewed in the context of current money market fund returns, such costs represent a significant disincentive to continued investment in institutional prime funds.[601] Although we acknowledge that the costs to money market fund shareholders may make investing in floating NAV money market funds uneconomical given the current rates of return, we note that we are adopting a two-year compliance period that may, to the extent that interest rates return to more typical levels, counter any disincentive that may exist currently.[602]

The TSI Report[603] provided ranges of costs that it expects would be imposed on floating NAV money market fund shareholders. These costs ranged from $250,000 for a U.S. business that invests in floating NAV money market funds and makes the fewest changes possible, to $550,000 for a government-sponsored entity money market fund shareholder.[604] We have carefully considered this range of costs to shareholders provided by the commenter and the changes from the proposal to the rule that we are adopting today, and we now believe that it is

600 *See* HSBC Comment Letter.

601 *See* Wells Fargo Comment Letter.

602 *See infra* section III.N.2. for a discussion of the floating NAV compliance date.

603 *See supra* note 583.

604 *See id.*, TSI Report (estimating that the one-time implementation costs would range from $350,000 to $370,000 for a corporate investor; $275,000 to $300,000 for a public university investor; $325,000 to $350,000 for a municipality investor; and $400,000 to $425,000 for a fiduciary investor).

appropriate to decrease our cost estimates from the proposal. Accordingly, we estimate that a shareholder whose systems (including related procedures and controls) would require less extensive modifications would incur one-time costs ranging from \$212,500 to \$340,000, while a shareholder whose systems (including related procedures and controls) would require more extensive modifications would incur one-time costs ranging from \$467,500 to \$850,000. We believe that these estimates better reflect the changes in our final rules from those that we proposed.[605] We also recognize that these estimates are more consistent with the range of cost estimates provided by this commenter. We estimate that the annual maintenance costs to these systems and procedures and controls, and the costs to provide continuing training, will range from 5% to 15% of the one-time implementation costs.[606]

c. Intraday Liquidity and Same-Day Settlement

As discussed below, we believe that floating NAV money market funds should be able to continue to provide shareholders with intraday liquidity and same-day settlement by pricing fund shares periodically during the day (*e.g.*, at 11 a.m. and 4 p.m.). In the Proposing Release, we noted that money market funds' ability to maintain a stable value also facilitates the funds' role as a cash management vehicle and provides other operational efficiencies for their shareholders. Shareholders generally are able to transact in fund shares at a stable value known in advance, which permits money market fund transactions to settle on the same day that an investor places a purchase or sell order and determine the exact value of his or her money market fund shares

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605 Consistent with our cost estimates discussed above for funds, intermediaries, and others in the distribution chain, we have considered in these estimates cost savings related to the tax relief discussed above. *See supra* section III.B.8.a.

606 *See supra* note 578. Commenters did not address specifically our estimate of ongoing costs to money market fund shareholders in floating NAV funds. Accordingly, we are not amending our estimate from the proposal.

(absent a liquidation event) at any time. These features have made money market funds an important component of systems for processing and settling various types of transactions.

Some commenters have expressed concern that intraday liquidity and/or same-day settlement would not be available to investors in floating NAV money market funds. These commenters point to, for example, operational challenges such as striking the NAV multiple times during the day while needing to value each portfolio security using market-based values.[607] A few commenters also noted that pricing services may not be able to provide periodic pricing throughout the day.[608] Some commenters also raised concerns about the additional costs involved with striking the NAV multiple times per day, including, for example, costs for pricing services to provide multiple quotes per day and for accounting agents to calculate multiple NAVs.[609] On the other hand, one commenter who provides pricing services noted that, while providing intraday liquidity and same-day settlement for floating NAV funds would require some investment, they believe that calculating NAVs multiple times per day is feasible within our proposed two-year compliance period.[610] A few commenters further noted that transfer agents will need to enhance their systems to account for floating NAV money market funds and condense their reconciliation and audit processes (which may, for example, increase the risk of errors).[611]

A few commenters also asserted that if floating NAV funds are unable to provide same-

607 *See, e.g.*, BlackRock II Comment Letter; ICI Comment Letter; Chamber II Comment Letter.

608 *See, e.g.*, Federated IV Comment Letter; Interactive Data Comment Letter; Chamber II Comment Letter.

609 *See, e.g.*, BlackRock II Comment Letter; Dreyfus Comment Letter; State Street Comment Letter.

610 *See* Interactive Data Comment Letter. Another commenter noted that money market funds would still be able to provide same-day settlement in floating NAV funds. *See* State Street Comment Letter.

611 *See* J.P. Morgan Comment Letter; Dreyfus Comment Letter; Comment Letter of DST Systems, Inc. (Sept. 18, 2013) ("DST Systems Comment Letter").

day settlement, this could affect features that are particularly appealing to retail investors, such as ATM access, check writing, and electronic check payment processing services and products.[612] First, as discussed below, we believe that many floating NAV money market funds will continue to be able to provide same-day settlement. Second, we note that under the revised retail money market fund definition adopted today, retail investors should have ample opportunity to invest in a fund that qualifies as a retail money market fund and thus is able to maintain a stable NAV. As a result, this should significantly alleviate concerns about the costs of altering these features and permit a number of funds to continue to provide these features as they do today. Nonetheless, we recognize that not all funds with these features may choose to qualify as retail money market funds, and therefore, some funds may need to make additional modifications to continue offering these features. We have included estimates of the costs to make such modifications below.

We understand that many money market funds currently permit same-day trading up until 5 p.m. Eastern Time. These funds do so because amortized cost valuation allows funds to calculate their NAVs before they receive market-based prices (typically provided at the end of the day after the close of the Federal Reserve Cash Wire). We recognize that, under the floating NAV reform, closing times for same-day settlement will likely need to be moved earlier in the day to allow sufficient time to calculate the NAV prior to the close of the Federal Reserve Cash Wire. One commenter suggested that it will take a minimum of three to four hours to strike a

[612] *See, e.g.*, Fidelity Comment Letter ("[B]roker-dealers offer clients a variety of features that are available generally only to accounts with a stable NAV, including ATM access, check writing, and ACH and Fedwire transfers. A floating NAV would force MMFs that offer same-day settlement on shares redeemed through wire transfers to shift to next day settlement or require fund advisers to modify their systems to accommodate floating NAV MMFs.").

market-based NAV price.[613] As a result, investors in floating NAV money market funds may not have the ability to redeem shares late in the day, as they can today. We also recognize that floating NAV money market funds may price only once a day, at least until such time as pricing vendors are able to provide continuous pricing throughout the day.[614] We considered these potential costs as well as the benefits of our floating NAV reform and believe that, as discussed above, it is appropriate to address, through the floating NAV reform, the incremental incentive that exists for shareholders to redeem in times of stress from institutional prime money market funds. We note, however, that because stable NAV money market funds may continue to use amortized cost as they do today (as revised from our proposal), these same-day settlement concerns raised by commenters here would be limited to institutional prime funds—the only money market funds subject to the floating NAV reform.[615]

We sought comment in the Proposing Release on the costs associated with providing same-day settlement and for pricing services to provide prices multiple times each day. One commenter provided survey data that estimated the range of costs for floating NAV funds to offer same-day settlement. Seventy-five percent of respondents estimated the one-time costs to be approximately $500,000 to $1 million, and 25% of respondents estimated the one times costs

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613 *See* Federated II Comment Letter.

614 *See* SIFMA Comment Letter (noting that in its survey of members, 60% of asset managers expect to price their floating NAV money market funds only once per day, which is less frequent than currently offered by most money market funds). *See also* Institutional Cash Distributors, ICD Commentary: Operational and Accounting Issues with the Floating NAV and the Impact on Money Market Funds (July 2013), available at http://www.sec.gov/comments/s7-03-13/s70313-40.pdf. One commenter noted that they are already investing in new technology that includes real-time debt security evaluations. *See* Comment Letter of Interactive Data.

615 *See* SIFMA Comment Letter (noting that, under our proposal, the impediment to same-day settlement exists for stable NAV money market funds as well as floating NAV money market funds because both types of funds would be prohibited from using amortized cost for securities with remaining maturities over 60 days). As noted above, we are no longer prohibiting stable NAV funds from using amortized cost.

to be approximately $1 million to $2 million.[616] Sixty-six percent of respondents approximated ongoing costs that would range between 10-15% of initial costs.[617] We did not receive other quantitative estimates specifically on the costs associated with modifying systems to allow for same-day settlement by floating NAV funds.[618] We have carefully considered this survey data with respect to same-day settlement issues in arriving at our aggregate operational cost estimates discussed above in section III.B.8.a.[619]

9. *Transition*

We are providing a two-year compliance date (as proposed) for money market funds to implement the floating NAV reform. A long compliance period will give more time for funds to implement any needed changes to their investment policies and train staff, and also will provide more time for investors to analyze their cash management strategies. This compliance period will also give time for retail money market funds to reorganize their operations and establish new funds. Importantly, this compliance period will allow additional time for the Treasury Department and IRS to consider finalizing rules addressing certain tax issues relating to a floating NAV described above and for the Commission to consider final rules removing NRSRO

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616 As discussed *supra* in note 587, we do not have access to the names of the survey respondents or their specific cost estimates and are therefore unable to approximate these costs on a per fund basis. Accordingly, the costs on a per fund basis will likely be significantly lower than the figures provided here.

617 *See* SIFMA Comment Letter.

618 We note that some commenters may have included costs associated with enabling floating NAV funds to provide same-day settlement in their cost estimates of operational implications generally. These costs are discussed above.

619 We have based our cost estimates for same-day settlement principally on staff experience and expertise. In assessing the reasonableness of our estimates, we considered as an outer bound the survey data provided by SIFMA (although as noted above, the survey respondents likely represent fund complexes and thus we are not able to determine these costs on a per fund basis). We estimate that money market funds will likely establish twice per day pricing as the appropriate balance between current money market fund practice to provide multiple settlements per business day and the additional costs and complexities involved in pricing money market fund shares using market-based values.

ratings from rule 2a-7,[620] so that funds could make several compliance-related changes at one time.

We acknowledge, as discussed in the Proposing Release and as noted by some commenters, that a transition to a new regulatory regime could itself cause the type of heavy redemptions that the amendments, including the floating NAV reform, are designed to prevent.[621] In the proposal, we noted that our proposed two-year compliance period would benefit money market funds and their shareholders by allowing money market funds to make the transition to a floating NAV at the optimal time and potentially not at the same time as all other money market funds. In addition, we stated our belief that money market fund sponsors would use the relatively long compliance period to select an appropriate conversion date that would minimize the risk that shareholders may pre-emptively redeem shares at or near the time of conversion if they believe that the market value of their shares will be less than $1.00. Several commenters reiterated this concern, with one commenter noting that shareholders in floating NAV money market funds may be incentivized to redeem in order to avoid losses or realize gains, depending on the expected NAV at the time of conversion.[622] A few commenters suggested that money market funds will likely be unwilling or unable to stagger their transitions over our proposed two-year transition period, but did not provide any survey data or other support for their

620 *See* Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule, Investment Company Act Release No. IC-31184 (July 23, 2014).

621 *See, e.g.,* Dreyfus Comment Letter; Goldman Sachs Comment Letter. The PWG Report suggests that a transition to a floating NAV could itself result in significant redemptions. See PWG Report, *supra* note 506, at 22.

622 *See* Stradley Ronon Comment Letter.

beliefs.[623]

We continue to believe that an extended compliance period (as adopted, two years) should help mitigate potential pre-emptive redemptions by providing money market fund shareholders with sufficient time to consider the reforms and decide, if they determine that a floating NAV investment product is not appropriate or desirable, to invest a stable NAV retail or government money market fund or an alternative investment product. We recognize that, although money market funds may comply with the rule amendments at any time between the effective date and the compliance date, in practice, money market funds may implement amendments relating to floating NAV near the end of the transition period, which may further cause the potential for widespread redemptions prior to the transition. Although a few commenters suggested as much,[624] we did not receive any survey data and we are not able to reasonably estimate the extent to which money market funds may or may not stagger their transition to a floating NAV.

We note, however, that in order to mitigate this risk, money market fund managers could take steps to ensure that the fund's market-based NAV is $1.00 or higher at the time of conversion and communicate to shareholders the steps that the fund plans to take ahead of time in order to mitigate the risk of heavy pre-emptive redemptions, though funds would be under no obligation to do so. Even if funds took such steps, investors may pre-emptively withdraw their assets from money market funds that will transact at a floating NAV to avoid this risk. We note, however, that while a two-year compliance period does not eliminate such concerns, we expect,

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623 *See, e.g.*, Stradley Ronon Comment Letter; SIFMA Comment Letter.

624 *Id.*

as discussed above, that providing a two-year compliance period will allow money market funds time to prepare and address investor concerns relating to the transition to a floating NAV, and therefore possibly mitigate the risk that the transition to a floating NAV, itself, could prompt significant redemptions. In addition, the liquidity fees and gates reforms will be effective and therefore available to fund boards as a tool to address any heightened redemptions that may result from the transition to a floating NAV.[625]

C. Effect on Certain Types of Money Market Funds and Other Entities

1. Government Money Market Funds

The fees and gates and floating NAV reforms included in today's Release will not apply to government money market funds, which are defined as a money market fund that invests at least 99.5% of its total assets in cash, government securities,[626] and/or repurchase agreements that are "collateralized fully" (*i.e.*, collateralized by cash or government securities).[627] In addition, under today's amendments, government money market funds may invest a *de minimis* amount (up to 0.5%) in non-government assets,[628] unlike our proposal and under current rule 2a-7, which permits government money market funds to invest up to 20% of total assets in non-government assets.[629]

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625 We will monitor fund redemption activity during the transition period and consider appropriate action if it appears necessary. For example, such action could include SEC Staff contacting fund groups to determine the nature of any stress from redemption activity and the potential need for any exemptive or other relief.

626 A "government security" is backed by the full faith and credit of the U.S. government. *See* rule 2a-7(a)(17); section 2(a)(16).

627 *See* rule 2a-7(a)(5) (defining "collateralized fully" by reference to rule 5b-3(c)(1), which requires that collateral be comprised of cash or government securities).

628 Non-government assets would include all "eligible securities" permitted under rule 2a-7 other than cash, government securities (as defined in section 2(a)(16), or repurchase agreements that are "collateralized fully" (as defined in rule 5b-3).

629 Under current rule 2a-7 (and as proposed), a government money market fund is defined based on the

Additionally, as proposed, a government money market fund will not be required to, but may, impose a fee or gate if the ability to do so is disclosed in a fund's prospectus and the fund complies with the fees and gates requirements in the amended rule.[630]

With respect to the floating NAV reform, most commenters supported a reform that does not apply to government money market funds.[631] Commenters noted that government funds pose significantly less risk of heavy investor redemptions than prime funds, have low default risk and are highly liquid even during market stress, and experienced net inflows during the financial crisis.[632] Also, few commenters explicitly supported or opposed excluding government funds

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portfolio holdings test used today for determining the accuracy of a fund's name ("names rule"). *See* Proposing Release, *supra* note 25, n.169 and accompanying text (rule 35d-1states that a materially deceptive and misleading name of a fund (for purposes of section 35(d) of the Investment Company Act (Unlawful representations and names)) includes a name suggesting that the fund focuses its investments in a particular type of investment or in investments in a particular industry or group of industries, unless, among other requirements, the fund has adopted a policy to invest, under normal circumstances, at least 80% of the value of its assets in the particular type of investments or industry suggested by the fund's name). While in the Proposing Release we discussed the definition of government money market fund in the context of the proposed floating NAV reform, this definition also was applicable to the proposed fees and gates reform. We understand that government money market funds today invest in other government money market funds ("fund of funds") and look through those funds to the underlying securities when determining compliance with rule 35d-1, or the "names rule." Accordingly, we expect that money market funds will continue to evaluate compliance with what investments qualify under our definition of government money market fund in the same way, and therefore categorize, as appropriate, investments in other government money market funds as within the 99.5% government-asset basket.

630 *See* rule 2a-7(c)(2)(iii). Any government money market fund that chooses not to rely on rule 2a-7(c)(2)(iii) may wish to consider providing notice to shareholders. We believe at least sixty days written notice of the fund's ability to impose fees and gates would be appropriate.

631 *See, e.g.*, J.P. Morgan Comment Letter; T. Rowe Price Comment Letter; Vanguard Comment Letter; ICI Comment Letter; IDC Comment Letter. *But see* Comment Letter of J. Huston McCulloch (Sept. 13, 2013) ("McCulloch Comment Letter") (suggesting that the floating NAV reform also apply to government money market funds and noting that even short-term treasury bills fluctuate in present value). As discussed below, we continue to believe that our floating NAV reform should not apply to government funds. Our belief is based, in part, on the strong commenter support in favor of a more targeted floating NAV reform that addresses the incremental incentive for institutional investors to redeem from prime funds, and our stated goal of preserving as much as possible the benefits of money market funds for most investors, while appropriately balancing concerns about the risks of heavy redemptions in prime funds during times of stress and the harm this can cause to short-term funding markets.

632 *See, e.g.*, J.P Morgan Comment Letter; ICI Comment Letter; IDC Comment Letter; T. Rowe Price Comment Letter.

from the fees and gates reforms. Of these commenters, a few supported a narrowly tailored fees and gates reform that does not apply to government money market funds,[633] and a few commenters argued that all types of money market funds – including government money market funds – should have the ability to apply a fee or gate.[634]

We continue to believe that government money market funds should not be subject to the fees and gates and floating NAV reforms. As discussed in the Proposing Release, government money market funds face different redemption pressures and have different risk characteristics than other money market funds because of their unique portfolio composition.[635] The securities primarily held by government money market funds typically have a lower credit default risk than commercial paper and other securities held by prime money market funds and are highly liquid in even the most stressful market conditions.[636] As noted in our proposal, government funds' primary risk is interest rate risk; that is, the risk that changes in the interest rates result in a change in the market value of portfolio securities.[637] Even the interest rate risk of government money market funds, however, is generally mitigated because these funds typically hold assets that have short maturities and hold those assets to maturity.[638]

As discussed in the DERA Study and below, government money market funds

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633 *See, e.g.,* BlackRock II Comment Letter, ("Government MMFs ... should not be required to implement liquidity fees and gates."); J.P. Morgan Comment Letter.

634 *See, e.g.,* U.S. Bancorp Comment Letter, ("If ultimately adopted, gating should be available to all classes of funds ...."); HSBC Comment Letter, ("[W]e believe all MMFs should be required to have the power to apply a liquidity fee or gate so that the MMF provider can manage a low probability but high impact event.").

635 Proposing Release, *supra* note 25, at section III.A.3. *See also* DERA Study, *supra* note 24, at 8-9.

636 Proposing Release, *supra* note 25, at section III.A.3.; *see also* J.P. Morgan Comment Letter; Vanguard FSOC Comment Letter.

637 *See* Proposing Release, *supra* note 25, at 66.

638 *See* Proposing Release, *supra* note 25, n.173.

historically have experienced inflows, rather than outflows, in times of stress.[639] In addition, the assets of government money market funds tend to appreciate in value in times of stress rather than depreciate.[640] Most government money market funds always have at least 30% weekly liquid assets because of the nature of their portfolio (*i.e.*, the securities they generally hold, by definition, are weekly liquid assets). Accordingly, with respect to fees and gates, the portfolio composition of government money market funds means that these funds are less likely to need to use these tools.

We have also determined not to impose the fees and gates and floating NAV reforms on government money market funds in an effort to facilitate investor choice by providing a money market fund investment option that maintains a stable NAV and that does not require investors to consider the imposition of fees and gates. As noted above, we expect that some money market fund investors may be unwilling or unable to invest in a money market fund that floats its NAV and/or can impose a fee or gate.[641] By not subjecting government money market funds to the fees and gates and floating NAV reforms, fund sponsors will have the ability to offer money market fund investment products that meet investors' differing investment and liquidity needs.[642] We also believe that this approach preserves some of the current benefits of money market funds for investors. Based on our evaluation of these considerations and tradeoffs, and the more limited

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639 *See* DERA Study, *supra* note 24, at 6-13.

640 *See* Proposing Release, *supra* note 25, n.412.

641 For example, there could be some types of investors, such as sweep accounts, that may be unwilling to invest in a money market fund that could impose a gate because such an investor generally requires the ability to immediately redeem at any point in time, regardless of whether the fund or the markets are distressed.

642 To the extent a number of government funds opt in to the fees and gates requirements, and there exists investor demand to invest in government funds that are not subject to the fees and gates reforms, we believe market forces and competitive pressures may lead to the creation of new government funds that do not implement fees and gates.

risk of heavy redemptions in government money market funds, we believe it is preferable to tailor today's reforms and not apply the floating NAV requirement to government funds, but to permit them to implement the fees and gates reforms if they choose.[643]

We also sought comment on the appropriate size of the non-government basket. Notwithstanding the relative safety and stability of government money market funds, we noted our concern that a credit event in this 20% basket or a shift in interest rates could trigger a decline in a fund's shadow price and therefore create an incentive for shareholders to redeem shares ahead of other investors (similar to that described for institutional prime funds subject to the floating NAV reform). We stated in the Proposing Release our preliminary belief that the benefits of retaining a stable share price money market fund option and the relative safety in a government money market fund's 80% basket appropriately counterbalances the risks associated with the 20% portion of a government money market fund's portfolio that may be invested in non-government securities.[644]

A number of commenters, however, raised concerns that the proposed definition of government money market fund would permit these funds to invest up to 20% of their portfolio in non-government assets, and, contrary to the goals of our money market fund reforms, potentially increase risk as stable NAV government funds may use this 20% basket to reach for

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643 Although government money market funds may opt-in to fees and gates, we expect these funds will rarely impose fees and gates because their portfolio assets present little credit risk.

644 The Proposing Release also would have required unaffected stable NAV funds, including government money market funds, to maintain a stable NAV through penny-rounding pricing (and generally eliminate amortized cost valuation except for securities with remaining maturities of 60 days or less). As discussed in section III.B.5, however, we have revised our approach and will permit stable NAV funds to continue to value portfolio securities using amortized cost and price fund shares using penny-rounding, as they do today. We are also providing expanded guidance on the use of amortized cost. *See infra* section III.D.

yield.[645] One commenter noted that, notwithstanding the current 20% non-government security basket, its government money market funds invest 100% of fund assets in government securities because doing so meets the expectations of government money market fund investors.[646]

We agree with commenters who suggested that permitting government funds to invest potentially up to 20% of fund assets in riskier non-government securities may promote a type of hybrid money market fund that presents new risks that are not consistent with the purposes of the money market reforms adopted today.[647] One commenter suggested that without a 20% basket, there may be an oversupply of commercial paper that disrupts corporate funding (presumably a

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645 *See, e.g.*, Goldman Sachs Comment Letter (suggesting that a new class of money market funds could emerge that would invest 19.9% of its assets in higher yield commercial paper and other privately issued debt while maintaining a stable NAV, and under Commission rules, holding itself out as a government money market fund); HSBC Comment Letter; CFA Institute Comment Letter; Systemic Risk Council Comment Letter; Invesco DERA Comment Letter. One commenter suggested reducing further the percentage of portfolio assets required to be invested in government securities and potentially including state and local government securities in the permissible investment basket. *See* Comment Letter of The Independent Trustees of the North Carolina Capital Management Trust ("Sept. 17, 2013) ("NC Cap. Mgmt. Trust Comment Letter"). We believe that the definition of a government money market fund should not include state and local government securities as suggested by this commenter. We discuss the risks present in these types of securities and municipal money market funds in general, *infra* section III.C.3. *See also infra* note 773 and accompanying text. In addition, as discussed above, reducing further the percentage of assets that must be invested in government securities undercuts the goals of this rulemaking. A few commenters also raised concerns about the economic effects of not applying our floating NAV reform to government funds, including promoting the ability of the federal government to borrow at the expense of state and local governments and private issuers. *See, e.g.*, Comment Letter of Arnold & Porter LLP on behalf of Federated Investors [Alternative 1] (Sept. 13, 2013) ("Federated III Comment Letter"); Mass. Governor Comment Letter; Systemic Risk Council Comment Letter. We address the macroeconomic effects of the floating NAV requirement and related exemptions in section III.K. One commenter also noted that because stable NAV funds (including government money market funds) would no longer be permitted to value securities using amortized cost, these funds would still incur many of the same operational burdens as floating NAV funds. *See* Federated II Comment Letter; Federated III Comment Letter. As discussed in section III.B.5, however, we have revised our approach from the Proposing Release and will permit both retail and government money market funds to continue to value portfolio securities using amortized cost and use the penny-rounding method of pricing.

646 *See* Fidelity DERA Comment Letter.

647 *See, e.g.*, Comment Letter of BlackRock, Inc. (June 6, 2013) ("Blackrock I Comment Letter"); CFA Institute Comment Letter (noting that "the 80 percent requirement [. . .] would undermine the implied NAV stability of a [g]overnment fund[']s structure. Allowing fund managers to invest as much as 20 percent of their assets in securities and instruments with greater volatility in value than government securities, while continuing to operate as stable NAV funds creates potential problems.").

result of a shift of assets out of institutional prime funds required to adopt our floating NAV reform).[648] As a result, this commenter suggested that the Commission wait until after final rules are adopted to evaluate the use of the 20% basket, including the effects on commercial paper supply, and then consider phasing the 20% basket out over time, if appropriate. We disagree. As stated above, the reason for not applying our fees and gates and floating NAV reforms to government money market funds is, in part, a recognition of the relative stability of this type of money market fund, through its lack of credit risk. It would limit the effectiveness of our floating NAV reform, for example, to allow a hybrid government fund to develop and potentially present credit risk to institutional investors seeking greater yield, while keeping the benefit of a stable NAV.

As noted above, many commenters suggested completely eliminating the 20% basket.[649] One commenter suggested a smaller *de minimis* basket, for example 5%.[650] Our approach includes a 0.5% *de minimis* basket in which government funds may invest in non-government securities. In order to evaluate an appropriate *de minimis* amount of non-government securities, Commission staff, using Form N-MFP data, analyzed the exposure of government money market funds to non-government securities between November 2010 and November 2013.[651]

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648 *See* Blackrock DERA Comment Letter. We discuss in section III.K below the macroeconomic effects of a potential shift in assets out of institutional prime money market funds and into alternative investment products.

649 *See, e.g.*, Goldman Sachs Comment Letter; HSBC Comment Letter; *see* Fidelity DERA Comment Letter.

650 *See* CFA Institute Comment Letter.

651 *See* DERA Memorandum regarding Government Money Market Fund Exposure to Non-Government Securities, dated March 17, 2014 (DERA Government MMF Exposure Memo") available at http://www.sec.gov/comments/s7-03-13/s70313-322.pdf. This analysis categorized securities into two types: "government securities" and "other securities." "Government securities" includes Treasury Debt, Treasury Repurchase Agreements, Government Agency Debt, and Government Agency Repurchase Agreements. "Other securities" includes all remaining non-government securities (as referred to above),

This analysis showed, among other things, that as of November 2013, approximately 17% of all money market funds were government funds and that average total net assets of government funds remained fairly constant at near $500 billion since March of 2012.[652] An analysis of the data also showed that, between November 2010 and November 2013, government money market funds generally invested between 0.5% and 2.5% of their total amortized cost dollar holdings in non-government securities and, more recently closer to 0.5% in non-government securities from November 2012 to November 2013.[653] For example, the 90th percentile of reporting government money market funds demonstrates that investments in non-government securities declined from 12.7% (representing 11 funds) in November 2010 to nearly zero in November 2013.[654]

A few commenters suggested that this analysis is flawed because it inappropriately focuses on the historical use of the non-government securities basket to predict future use of the 20% basket, when we cannot accurately predict how investors will react following the adoption of proposed regulatory changes, such as a floating NAV.[655] One commenter further suggested

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such as non-government tri-party repurchase agreements, financial company commercial paper, and variable rate demand notes without a demand feature or guarantee. Although this analysis sought, where possible, to identify "other securities" that may actually qualify as "government securities," it is possible that some assets classified as other securities may still qualify as government securities. Accordingly, the results of this analysis should be viewed as upper bounds on the extent to which government money market funds invest in "other securities" *(i.e.* non-government securities).

652 *See id.* (reporting based on Form N-MFP data, as of November 2013, 97 government money market funds out of 565 total money market funds).

653 *Id.*

654 *Id.*

655 *See, e.g.,* Comment Letter of the Dreyfus Corporation (Apr. 23, 2014, DERA Study) ("Dreyfus DERA Comment Letter") (expecting that the staff's analysis would not show significant industry investment by government funds in non-government securities, but suggesting that this is a result of investor preference that must be viewed in the context of stable NAV money market funds and noting that investor interest in hybrid government money market funds may increase in a floating NAV context); Comment Letter of Wells Fargo Fund Management, LLC (Apr. 23, 2014, DERA Study) ("Wells Fargo DERA Comment

that the analysis instead should address the potential systemic risk posed by a hybrid fund.[656] As other commenters noted, however, we recognize the potential for increased investor interest in hybrid government money market funds, and as discussed above, we are concerned that continuing to permit government money market funds to invest potentially up to 20% of fund assets in non-government securities presents risks that are contrary to goals of this rulemaking. In fact, the concern raised by these commenters, suggesting that the historical use of the 20% basket is irrelevant in the context of a future regulatory regime that includes a floating NAV reform, further supports our concern that retaining the 20% non-government securities basket is likely to result in increased risk taking by institutional prime fund investors who move to government money market funds in search of greater yield (but with the continued benefit of a stable NAV). We also note that our staff's analysis of the historical use of the 20% basket establishes the baseline (*i.e.*, the extent to which government money market funds have used the 20% basket) for our economic analysis discussed below.

One commenter stated its belief that allowing government money market funds to invest up to 20% in non-government securities will not materially increase the risks of these funds to investors or the financial system and that such a fund would have adequate liquidity to satisfy any increased redemption pressure that results from a credit event in the 20% basket.[657] This

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Letter") (suggesting that without the ability for government money market funds to diversify into prime and municipal securities, a significant inflow into government funds could force already low yields on short-term government securities to turn negative). Although we recognize the potentially adverse effects of negative yields (*e.g.*, some funds might close to further investment, affecting capital formation), we believe that the potential risks associated with a government fund investing up to 20% of its total assets in non-government assets outweighs speculative concerns about future interest rates that may or may not remain at historic lows two years after the rules regarding our floating NAV reform become final.

656 *See* Dreyfus DERA Comment Letter.

657 *See* Wells Fargo DERA Comment Letter.

commenter cites to our statement in the Proposing Release, where we characterized as "minimal" the risk of government money market funds that maintain at least 80% of their total assets in cash, government securities, or repurchase agreements that are collateralized by cash or government securities.[658] We continue to believe, however, as we also stated in the Proposing Release, that "a credit event in [the] 20% portion of the portfolio or a shift in interest rates could trigger a drop in the shadow price, thereby creating incentives for shareholders to redeem shares ahead of other investors."[659] Even if we assume that a government fund had sufficient liquidity from its 80% basket of government securities to cover adequately increased redemptions that result from a credit event in the 20% basket, we note that the structural incentives that exist in stable NAV money market funds, and the associated first mover advantage and potential shareholder dilution concerns, still exist.[660] And, indeed, after our floating NAV reform takes effect, the incentives could be even more pronounced in government funds if those institutional investors who are the most sensitive to risk move to government funds.

Based on the staff's analysis, we expect that the 0.5% non-conforming basket is consistent with current industry practices and strikes an appropriate balance between providing government money market fund managers with adequate flexibility to manage such funds while preventing them from taking on potentially high levels of risk associated with non-government assets. We therefore are revising the definition of a government fund to require that such a fund invest at least 99.5% (up from 80% in the proposal) of its assets in cash, government securities, and/or repurchase agreements that are collateralized by cash or government securities. A money

658 *See* Proposing Release, *supra* note 25, at text accompanying n.176.

659 *See id.* at text following n.173.

660 *See supra* section III.B.3.

market fund may not call itself or include in its name "government money market fund" or similar names unless the fund complies with this requirement.[661]

Because we believe that the *de minimis* basket we are adopting is consistent with current industry practice, we do not believe that government funds will experience any material reduction in yield, based on current interest rates, as a result of our amendments. In addition, we do not believe that government funds will be required to make any systems modifications as a result of changing to a 0.5% *de minimis* basket because funds are already required to monitor compliance with the existing 20% non-government basket requirement. As discussed below, however, we do expect that money market funds may need to amend their policies and procedures to reflect the changes we are adopting today, including the new 0.5% *de minimis* basket.[662] We estimate that it will cost each money market fund complex approximately $2,580 in one-time costs to amend their policies and procedures.[663]

Because staff analysis shows that our 0.5% non-conforming basket is consistent with industry practice, we believe that any effect on efficiency, competition, or capital formation should be minimal. In addition, any government money market funds that do currently use the 20% basket could roll out of any excess exposure to non-government assets by the time that funds are required to comply with the amended rule, given rule 2a-7's maturity limits on portfolio securities. Nevertheless, reducing the size of the basket could affect efficiency, competition, or capital formation in the future because decreasing the size of the basket reduces a

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661 Rule 2a-7(a)(16) defines a government money market fund and requires that such funds invest at least 99.5% of fund assets in cash, government securities, and repurchase agreements that are collateralized fully.

662 These costs are included as part of the Paperwork Reduction Act analysis. *See infra* section IV.A.

663 *Id.*

government fund's flexibility to invest in non-government assets in the future. For example, decreasing the size of the basket could lead to a loss of efficiency if government funds are unable to invest in securities that government funds are currently permitted to purchase. Reducing the basket size could also restrict competition among money market funds because government funds would not be able to invest more than 0.5% in non-government assets and thus will have a reduced ability to compete with other money market funds based on yield. Finally, capital formation in the commercial paper market could be hindered by reducing the 20% basket and reducing these funds' ability to invest in commercial paper. We do not expect any such effect to be substantial, however, given the very small extent to which government funds have recently used the non-government basket.

We also recognize the potential for a significant inflow of money market fund assets into government money market funds from institutional prime investors (seeking a stable NAV alternative) and investors that are unable or unwilling to invest in a product that may restrict liquidity (through our liquidity fees and gates reform). As we discuss in section III.K below, we do not anticipate that the impact from the final rule amendments, including those related to our floating NAV reform, will be large enough to constrain government funds and their potential investors.

2. *Retail Money Market Funds*

As was proposed, our fees and gates reform will apply to retail money market funds, but our floating NAV reform will not. However, as discussed more below, we are revising the definition of a retail money market fund from our proposal to address concerns raised by commenters. As amended, a retail money market fund means a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.[664]

As discussed in the Proposing Release and the DERA Study, retail investors historically have behaved differently from institutional investors in a crisis, being less likely to make large redemptions quickly in response to the first sign of market stress. During the financial crisis, institutional prime money market funds had substantially larger redemptions than prime money market funds that self-identify as retail.[665] As noted in the Proposing Release, for example, approximately 4-5% of retail prime money market funds had outflows of greater than 5% on each of September 17, 18, and 19, 2008, compared to 22-30% of institutional prime money market funds.[666] Similarly, in late June 2011, institutional prime money market funds experienced heightened redemptions in response to concerns about their potential exposure to the Eurozone debt crisis, whereas retail prime money market funds generally did not experience a similar increase.[667] Studies of money market fund redemption patterns in times of market stress also have observed this difference.[668] As we noted in the Proposing Release and discussed above,

664 *See infra* note 679 and accompanying text.

665 *See* Proposing Release, *supra* note 25, at n.185 and accompanying text.

666 *See id.*

667 *See* Proposing Release, *supra* note 25, at n.187 and accompanying text. We noted that, based on iMoneyNet data, retail money market funds experienced net redemptions of less than 1% between June 14, 2011 and July 5, 2011, and only 27 retail money market funds had redemptions in excess of 5% during that period (and of these funds only 7 had redemptions in excess of 10% during this period), far fewer redemptions than those incurred by institutional funds. We have also reviewed the redemption activity for institutional prime funds during this same time period and note that institutional prime funds experienced net redemptions of approximately 9% between June 14, 2011 and July 5, 2011, and 46 institutional prime money market funds had redemptions in excess of 5% during that period (and of these funds 35 had redemptions in excess of 10% during this period), far greater redemptions than those incurred by retail funds.

668 *See, e.g.*, DERA Study, *supra* note 24, at 8; Cross Section, *supra* note 35, at 9 (noting that institutional prime money market funds experienced net redemptions of $410 billion (or 30% of assets under management) in the four weeks beginning September 10, 2008, based on iMoneyNet data, while retail prime money market funds experienced net redemptions of $40 billion (or 5% of assets under management) during this same time period); Marcin Kacperczyk & Philipp Schnabl, *How Safe are Money Market*

we believe that institutional shareholders tend to respond more quickly than retail shareholders to potential market stresses because generally they have greater capital at risk and may be better informed about the fund through more sophisticated tools to monitor and analyze the portfolio holdings of the funds in which they invest.[669] We discuss below our fees and gates and floating NAV reforms and their application to retail money market funds, as defined by our amendments adopted today.

a. Fees and Gates

Largely for the reasons discussed above, several commenters argued that our fees and gates reforms should not apply to retail money market funds, in the same way that our floating NAV reform would not apply to retail funds.[670] More specifically, commenters argued that retail investors behave differently than institutional investors and, therefore, retail money market funds are insulated from runs and sudden losses of liquidity.[671]

Although, as discussed above, the evidence suggests that retail investors historically have exhibited much lower levels of redemptions or a slower pace of redemptions in times of stress,[672]

Funds?, 128 Q. J. ECON. 1017 (April 5, 2013) ("Kacperczyk & Schnabl"); Wermers Study, *supra* note 35.

669 We also understand that retail money market funds' shareholder base tends to be less concentrated and, thus, less likely to move large amounts of money at once. We believe this may be, in part, why retail money market funds experienced fewer redemptions during the financial crisis.

670 *See, e.g.,* Fin. Svcs. Roundtable Comment Letter; Comment Letter of United Services Automobile Association (Sept. 17, 2013) ("USAA Comment Letter"); MFDF Comment Letter; *see also* Fidelity Comment Letter (arguing that the fees and gates requirements should be limited to institutional prime funds).

671 *See, e.g.,* USAA Comment Letter; MFDF Comment Letter ("Because retail investors are demonstrably slower to redeem their shares, the fund's adviser will have greater ability to manage the fund's liquidity in a way necessary to meet redemptions, even in times of market stress, without necessitating the cost of that liquidity being imposed on redeeming retail shareholders."); Comment Letter of Financial Services Institute (Sept. 17, 2013) ("Fin. Svcs. Inst. Comment Letter") ("Retail investors pose a substantially lower risk of high redemption activities during periods of market stress ....").

672 *See* Proposing Release, *supra* note 25, at n.199 and accompanying text.

we cannot predict future investor behavior with certainty and, thus, we cannot rule out the potential for heavy redemptions in retail funds in the future. Empirical analyses of retail money market fund redemptions during the financial crisis show that at least some retail investors eventually began redeeming shares.[673] Similarly, we note that when the Reserve Primary Fund, which was a mixed retail and institutional money market fund, "broke the buck" as a result of the Lehman Brothers bankruptcy, almost all of its investors ran—retail and institutional alike. Additionally, we note that it is possible that the introduction of the Treasury Temporary Guarantee Program on September 19, 2008 (a few days after institutional prime money market funds experienced heavy redemptions) lessened the incentive for shareholders to redeem from retail money market funds. Moreover, as we recognized in the Proposing Release, retail prime money market funds, unlike government money market funds, generally are subject to the same credit and liquidity risks as institutional prime money market funds.[674] As such, absent fees and gates, there would be nothing to help manage or prevent a run on retail prime money market funds in the future.

As noted in the Proposing Release, we also believe there is a difference in the anticipated shareholder behaviors we are trying to address by the fees and gates requirements and floating NAV requirement as applied to retail funds.[675] The floating NAV requirement is specifically designed to address shareholders' incentive to redeem to take advantage of pricing discrepancies between a money market fund's market-based NAV per share and its stable share price. As

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673 *See* Proposing Release, *supra* note 25, at n.197 and accompanying text; *see also* Wermers Study, *supra* note 35.

674 *See* Proposing Release, *supra* note 25, at 199.

675 *See* Proposing Release, *supra* note 25, at 200.

discussed above, we believe this incentive likely is greatest among institutional investors because they are more likely to have significant sized investments at stake and the sophistication and resources to monitor actively such discrepancies.[676] While retail investors are unlikely to be motivated to a substantial degree by the first-mover advantage created by money market funds' stable pricing convention, they may be motivated to redeem heavily in flights to quality, liquidity, and transparency (even if they may do so somewhat slower than institutional investors). Fees and gates are designed to address these types of redemptions.[677] We also note that retail money market funds today operate with the potential for gates under rule 22e-3, which allows a fund board to permanently gate and liquidate a money market fund under certain circumstances. Today's amendments include a number of disclosure reforms that are designed to ensure that retail investors will understand this new additional fee and gate regime for money market funds.[678]

In addition, the floating NAV requirement will affect a shareholder's experience with an institutional prime money market fund on a daily basis. It thus is a significant reform that is targeted only at those investors that we consider most likely to be motivated to redeem at least in part on the basis of pricing discrepancies in the fund. In contrast, and as discussed above, the fees and gates requirements will not affect a money market fund on a day-to-day basis; its effect will be felt only if the fund's weekly liquid assets fall below 30% of its total assets–*i.e.,* unless it comes under potential stress–and even then, only if the board determines that a fee and/or gate is

676 *See generally supra* note 669 and accompanying text.

677 *See supra* section III.B.1; *see also* Invesco Comment Letter (suggesting that liquidity fees would mitigate the "first-mover" advantage); UBS Comment Letter.

678 *See infra* section III.E.

in the best interests of the fund. Further, while we recognize that a retail money market fund may be less likely to experience strained liquidity (and thus less likely to need to impose a fee or gate), we believe there is still a sufficient risk of this occurring that we should allow such funds to impose a fee or gate to manage any related heavy redemptions when the weekly liquid assets fall below 30% and doing so is in the fund's best interests. For the same reasons, we believe requiring a fund to impose a liquidity fee when weekly liquid assets fall below 10% is also appropriate, unless the board determines otherwise based on the fund's best interests. Accordingly, retail money market funds will be subject to the fees and gates reform.

b. Floating NAV

i. Definition of Retail Money Market Fund

As we proposed, however, we are not imposing the floating NAV reform on retail money market funds. For purposes of the floating NAV reform, we are defining a retail money market fund to mean a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons ("retail funds").[679]

Many commenters generally supported not applying a floating NAV requirement to retail money market funds, noting, for example, retail investors' moderate redemption activity during the financial crisis as compared with institutional prime funds and the importance of retaining a

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679 *See* rule 2a-7(a)(25). "Beneficial ownership" typically means having voting and/or investment power. *See, e.g.*, Securities Exchange Act rules 13d-3 and 16a-1(a)(2); Metropolitan Life Insurance Company, SEC Staff No-Action Letter (Nov. 23, 1999) ("Met Life No-Action Letter") at n.9 and accompanying text. We note that our definition of retail money market fund is consistent with the way in which Congress defined a "retail customer" in section 913(a) of the Dodd-Frank Act (defining "retail customer," among other things, as a natural person). 15 U.S.C. 80b-11(g)(2). A retail fund may disclose in its prospectus that it limits investments to accounts beneficially owned by natural persons and describe in its policies and procedures how the fund complies with the retail fund limitation when a shareholder of record is an omnibus account holder that does not provide transparency down to the beneficial ownership level. We discuss omnibus account issues below. *See infra* section III.C.2.b.iii.

stable NAV investment product for retail investors that facilitates cash management, particularly where there are few alternatives offering diversification, stability, liquidity, and a market-based rate of return for these investors.[680] Some commenters, however, objected to, or expressed concerns about not applying a floating NAV to retail funds. These commenters noted, for example, that (i) retail investors in the future may not behave the way we observed in 2008; (ii) increases in sophistication of retail investors (for example, through technological advancements) may lead retail investors to act more like institutional investors over time; and (iii) any differentiation between retail and institutional funds provides opportunities for gaming behavior by institutional investors.[681]

We recognize, as discussed above, that we cannot be certain how retail investors would have reacted during the financial crisis had the Treasury Temporary Guarantee Program not been implemented. Similarly, we cannot predict whether retail investors, in light of new tools to manage liquidity (*e.g.*, fees and gates) and enhanced disclosure and transparency, will behave more like institutional investors in the future. But the evidence to date suggests that retail investors do not present the same risks associated with high levels of redemptions posed by institutional investors.[682] We continue to believe that the significant benefits of providing an alternative stable NAV fund option justify the risks associated with the potential for a shift in retail investors' behavior in the future, particularly given that retail money market funds will be able to use fees and gates as tools to stem heavy redemptions should they occur. We also note

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680 *See, e.g.*, Blackrock I Comment Letter; Blackrock II Comment Letter; Vanguard Comment Letter; T. Rowe Price Comment Letter; ICI Comment Letter.

681 *See, e.g.*, Goldman Comment Letter; J.P. Morgan Comment Letter; HSBC Comment Letter; Hanson *et al.* Comment Letter.

682 *See supra* notes 666 and 667 and accompanying text.

that, as discussed below, our revised approach to defining a retail fund based on shareholder characteristics should minimize the potential for gaming behavior by institutional investors.

As of February 28, 2014, funds that self-report as retail money market funds held nearly $998 billion in assets, which is approximately one-third of all assets held in money market funds.[683] Unlike under our proposal, which would have required retail funds generally to value portfolio securities using market-based factors rather than amortized cost, money market funds that qualify as retail funds may continue to offer a stable value as they do today—and facilitate their stable price by use of amortized cost valuation and/or penny-rounding pricing of their portfolios. As discussed below, our definition of a retail fund reflects several modifications from our proposal (in which a retail fund was defined as a fund that limits redemptions to $1 million in a single business day) and reflects an approach suggested by a number of commenters.[684]

We proposed to define a fund as retail, and thus not subject to the floating NAV reform, if it is a fund that restricts a shareholder of record from redeeming more than $1 million in any one business day. We explained our belief that this approach should be relatively simple to implement because it would only require a fund to establish a one-time, across-the-board redemption policy, unlike other approaches based on shareholder characteristics that would

683 Staff estimates were derived by using self-reported data from iMoneyNet as of February 28, 2014 to estimate percentages for retail and institutional segments by money market fund type. Staff then applied these percentages to the total market size segments based on Form N-MFP data as of February 28, 2014. Of these assets, approximately $593 billion are held by prime money market funds and another $209 billion are in government funds. Because the final rules do not subject government funds to the floating NAV requirement, funds that qualify as retail money market funds would be potentially relevant only to the investors holding the $593 billion in retail prime funds.

684 The definition of retail money market fund we are adopting is informed by a joint comment letter submitted by eight fund complexes that manage approximately $1.2 trillion of U.S. money market funds (representing approximately 45% of the total U.S. money market fund industry assets) as of September 30, 2013. *See* Comment Letter dated October 31, 2013 (submitted by BlackRock, Fidelity, Invesco, Legg Mason & Western Asset, Northern Trust, T. Rowe, Vanguard, and Wells Fargo) ("Retail Fund Joint Comment Letter").

require ongoing monitoring by the fund. We also stated our belief that our proposed approach would reduce the risk that a retail fund would experience heavier redemption requests than it could effectively manage in a crisis because it would limit the total amount of redemptions a fund can experience in a single day and therefore provide the fund time to better predict and manage its liquidity.

In the Proposing Release, we selected a $1 million redemption limit because we expected this amount would be high enough to make money market funds a viable cash management tool for retail investors, but low enough that institutional investors would likely self-select out of these funds because it would not satisfy their operational needs.[685] Under the proposed retail fund definition, a fund would be able to permit an "omnibus account holder" to redeem more than $1 million in a single business day provided the fund has policies and procedures reasonably designed to allow the conclusion that the omnibus account holder does not permit any beneficial owner to directly or indirectly redeem more than $1 million in a single day.[686] The Proposing Release also considered and sought comment on other ways to distinguish a retail fund from an institutional fund, including applying limitations based on maximum account balance, shareholder concentration, or shareholder characteristics (*e.g.*, a social security number that would identify the shareholder as an individual person and not an institution).[687] We discuss below comments received on these alternative means for distinguishing retail funds from

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685 The Proposing Release also noted that a money market fund that sought to qualify as a retail fund would need to effectively describe that it is intended for retail investors and include in the fund's prospectus and advertising materials information about the fund's daily redemption limitations. *See* Proposing Release, *supra* note 25, at section III.A.4.b.i.

686 We proposed to define an "omnibus account holder" as "a broker, dealer, bank, or other person that holds securities issued by the fund in nominee name." *See* proposed (FNAV) rule 2a-7(c)(3)(ii).

687 *See infra* note 701 and accompany text for a discussion of social security numbers as a means for distinguishing retail from institutional funds in the Proposing Release.

institutional funds.

A number of commenters supported (some with suggested scope modifications) our proposed approach to define a retail investor by means of a daily redemption limit.[688] Many commenters, however, raised concerns with defining a retail fund as a fund that imposes a daily redemption limit on its investors, stating, for example, that the $1 million daily redemption limit would (i) unduly limit liquidity by prohibiting transactions by shareholders whose behavior does not present run risk; (ii) restrict full liquidity not only in times of market stress, but also when the markets are operating effectively; and (iii) be costly and difficult to implement, monitor, and enforce.[689] As noted above, however, a number of commenters have suggested defining a retail money market fund as a fund that seeks to limit beneficial ownership interest to natural persons.[690] After analyzing the comments received, we agree that defining a retail fund as a fund that has policies and procedures reasonably designed to limit beneficial ownership to natural persons ("natural person test") provides a simpler and more cost-effective way to accomplish our goal of targeting the floating NAV reform to the type of money market fund that has exhibited greater tendencies to redeem first in times of market stress and has the investors most likely to seek to take advantage of any pricing discrepancies and therefore dilute the interests of

688 *See, e.g.*, CFA Institute Comment Letter; Northern Trust Comment Letter; Schwab Comment Letter; USAA Comment Letter; Vanguard Comment Letter. These commenters also offered suggested scope modifications, including increasing or decreasing the daily redemption limit, creating an advance notice provision (pre-approved redemptions over $1 million in a single business day), applying the daily redemption limit on a per-account basis rather than a per-shareholder basis, and exempting certain transactions from the daily redemption limit.

689 *See, e.g.*, Comment Letter of John D. Hawke, Jr., Arnold and Porter, LLP on behalf of Federated Investors, Inc., Washington, District of Columbia (Nov. 21, 2013) ("Federated XIII Comment Letter"); Federated II Comment Letter; Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter.

690 *See supra* note 684 and accompanying text. In addition to the eight commenters who submitted a joint comment letter in support of defining a retail fund by limiting beneficial ownership to natural persons, a number of other commenters also supported this definition. *See, e.g.*, SunTrust Comment Letter; ICI Comment Letter; SIFMA Comment Letter.

remaining shareholders.[691] We discuss below the operation of the natural person test and its economic effects.

ii. Operation of the Natural Person Test

As discussed in the Proposing Release, it currently is difficult to distinguish precisely between retail and institutional money market funds, given that funds generally self-report this designation, there are no clear or consistent criteria for classifying funds, and there is no common regulatory or industry definition of a retail investor or a retail money market fund. We noted that the operational challenges of defining a retail fund are numerous and complex. In addition, as discussed below, drawing a distinction between retail and institutional investors is complicated by the extent to which shares of money market funds are held by investors through omnibus accounts and other financial intermediaries. We also recognize that any distinction between retail and institutional funds could result in "gaming behavior" whereby investors having the general attributes of an institution might attempt to fit within the confines of whatever retail fund definition we craft. We believe, however, that defining a retail fund using the natural person test will, as a practical matter, significantly reduce opportunities for gaming behavior because we believe that most funds will use social security numbers as part of their compliance process to limit beneficial ownership to natural persons, and institutional investors are not issued

691 A number of commenters supported alternate means of defining a retail investor. *See, e.g.*, Schwab Comment Letter (supporting defining retail investors based on concentration risk); Deutsche Comment Letter (supporting defining retail investors based on a maximum account balance limit); SIFMA Comment Letter (supporting defining retail investors based on a minimum initial investment, but also supporting the "natural person" approach we are adopting today); Dreyfus Comment Letter (supporting defining retail investors based on settlement times); Fin. Svcs. Roundtable Comment Letter (supporting defining institutional investors, rather than retail investors, by, for example, reference to assets under management). We have carefully considered these alternative means of defining a retail investor, but we believe, as discussed below, that the "natural person" approach suggested by a number of other commenters is a simpler and more cost effective way to distinguish between institutional and retail investors.

social security numbers.

A money market fund that has policies and procedures reasonably designed to limit beneficial owners to natural persons will not be subject to the floating NAV reform. We expect that a fund that intends to qualify as a retail money market fund would disclose in its prospectus that it limits investments to accounts beneficially owned by natural persons.[692] Funds will have flexibility in how they choose to comply with the natural person test. As noted by commenters, we expect that many funds will rely on social security numbers to confirm beneficial ownership by a natural person. The social security number is one well-established method of identification, issued to natural persons who qualify under the Social Security Administration's requirements. Because social security numbers are in nearly all cases obtained as part of the account-opening process (for natural persons) and are populated in transfer agent and intermediary recordkeeping systems, this approach should reduce significantly the required enhancements to systems, processes, and procedures that would be required under alternative approaches, including our proposed daily redemption limit.[693] In addition, for intermediaries using omnibus account registrations where the beneficial owners are natural persons (*e.g.*, retail brokerage accounts, certain trust accounts, and defined contribution plan accounts), a social security number is a key component of customer account-opening procedures and compliance and therefore should allow intermediaries to distinguish retail from institutional investors (and therefore assist retail funds in satisfying the retail fund definition).[694] In many cases, funds and intermediaries already collect

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692 For example, a fund could disclose that it is a retail-only money market fund not subject to the floating NAV requirement, consistent with the requirements of Form N-1A. *See, e.g.*, Item 6 and Item 11 of Form N-1A; *see also infra* note 940 and accompanying text.

693 *See, e.g.*, ICI Comment Letter.

694 *Id.*

this data to comply with "know your customer" practices and anti-money laundering laws and should easily be able to identify if a beneficial owner is a natural person.[695]

As commenters noted, defining a retail fund in this way encompasses a large majority of individual investors who use retail accounts today.[696] For example, we understand that many tax-advantaged savings accounts and ordinary trusts are beneficially owned by natural persons, and therefore would likely qualify under the natural person test.[697] We understand that, often, in these types of accounts, natural persons are responsible for making the decision to redeem from a fund during a time of crisis (rather than an institutional decision maker). We acknowledge, however, that a fund may still qualify as a retail money market fund notwithstanding having an institutional decision maker (*e.g.*, a plan sponsor in certain retirement arrangements, or an investment adviser managing discretionary investment accounts) that could eliminate or change an investment option, such as offering or investing in a money market fund. We also recognize that there is a potential risk that an institutional decision maker may react differently in times of market stress than the individuals that we expect will invest in retail money market funds as defined under our amended rule. We believe that in many instances, however, this risk can be

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695 *Id.*

696 *See* Retail Fund Joint Comment Letter.

697 Natural persons often invest in money market funds through a variety of tax-advantaged accounts and trusts, including, for example: (i) participant-directed defined contribution plans (section 3(34) of the Employee Retirement Income Security Act ("ERISA")); (ii) individual retirement accounts (section 408 or 408A of the Internal Revenue Code ("IRC")); (iii) simplified employee pension arrangements (section 408(k) of the IRC); (iv) simple retirement accounts (section 408(p) of the IRC); (v) custodial accounts (section 403(b)(7) of the IRC); (vi) deferred compensation plans for government or tax-exempt organization employees (section 457 of the IRC); (vii) Keogh plans (section 401(a) of the IRC); (viii) Archer medical savings accounts (section 220(d) of the IRC); (ix) college savings plans (section 529 of the IRC); (x) health savings account plans (section 223 of the IRC); and (xi) ordinary trusts (section 7701 of the IRC). Accounts that are not beneficially owned by natural persons (for example, accounts not associated with social security numbers), such as those opened by businesses, including small businesses, defined benefit plans, or endowments, would not qualify as retail money market funds.

mitigated. A number of commenters noted, for example, that under section 3(34) of ERISA, the plan sponsor of a defined contribution plan can eliminate or change an investment option without providing notice of the change, but stated that the plan sponsor would likely provide 30 days' notice of any change in order to obtain the benefit of the fiduciary safe harbor in section 404(c) of ERISA.[698] To the extent that there remains a risk that an institutional decision maker associated with a qualifying retail fund makes decisions inconsistent with how we understand retail funds generally behave, we believe that our approach appropriately balances this potential risk against the substantial benefits of providing a simple and cost-effective way to distinguish retail funds and provide a targeted floating NAV requirement.

As noted above, funds that intend to satisfy the retail fund definition will be required to adopt and implement policies and procedures reasonably designed to restrict beneficial ownership to natural persons.[699] For example, funds could have policies and procedures that will help enable the fund to "look through" these types of accounts and reasonably conclude that the beneficial owners are natural persons. A fund's policies and procedures could, for example, require that the fund reasonably conclude that ownership is limited to natural persons and do so (i) directly, such as when the investor provides a social security number to the fund adviser, when opening a taxable or tax-deferred account through the adviser's transfer agent or brokerage division; or (ii) indirectly, such as when a social security number is provided to the fund adviser in connection with recordkeeping for a retirement plan, or a trust account is opened with information regarding the individual beneficiaries. We note that our definition of a retail money

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698 *See* Retail Fund Joint Comment Letter.

699 *See* rule 2a-7(a)(25).

market fund provides a fund with the flexibility to develop policies and procedures that best suit its investor base and does not require that the fund use social security numbers to reasonably conclude that investors are natural persons. For example, a money market fund or the appropriate intermediary could determine the beneficial ownership of a non-U.S. natural person by obtaining other government-issued identification, for example, a passport.[700]

In the Proposing Release, we discussed as an alternative to the daily redemption limit approach requiring that funds consider shareholder characteristics, such as whether the investor has a social security number or a taxpayer identification number. We noted our concern, however, that social security numbers do not necessarily correlate to an individual, and taxpayer identification numbers do not necessarily correlate to a business (for example, businesses operated as pass-through entities).[701] One commenter reiterated this concern.[702] We note, however, that the definition of a retail fund does not rely solely on each investor having a social security number. Rather, our approach recognizes that in most cases, a fund or intermediary may often satisfy the natural person test by implementing policies and procedures that require verifying a social security number at the time of account opening. But, the fund or intermediary may, for example, determine that a non-U.S. investor who does not have a social security

700 *See, e.g.*, 31 CFR 1023.220(a)(2)(i)(A)(4)(ii) (requiring a broker-dealer to obtain for non-U.S. persons [a] taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard).

701 *See* Proposing Release, *supra* note 25, at section III.A.4.c.iii.

702 *See* Schwab Comment Letter (suggesting that any final rule identify accounts that are inherently retail and include them as part of the definition of a retail fund so that, for example, estates and trusts would qualify to invest in a retail money market fund (despite having a tax identification number, rather than a social security number). We note that an estate or trust would be able to qualify for investment in a retail fund under our definition, provided the fund reasonably concludes that the beneficial owner(s) is a natural person.

number is a natural person (*e.g.*, using a passport).

Finally, we note that, currently, it is not uncommon for a money market fund to be owned by both retail and institutional investors, typically through a retail and institutional share class, respectively.[703] In order to qualify as a retail money market fund, funds with separate share classes for different types of investors (as well as single-class funds for both types of investors) will need to reorganize into separate money market funds for retail and institutional investors, which may be separate series of the fund.[704] In the case of a money market fund with retail and institutional share classes, two commenters suggested that the Commission provide relief from section 18(f)(1) of the Act (designed, in part, to prohibit material differences among the rights of shareholders in a fund)[705] to allow the fund to reorganize the classes into separate money market funds.[706]

We recognize that a reorganization of a share class of a money market fund into a new

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703 Rule 18f-3 under the Investment Company Act enables a money market fund to offer retail and institutional share classes by providing an exemption from sections 18(f)(1) and 18(i) of the Investment Company Act. We are amending, as proposed, rule 18f-3 (the multiple class rule) to replace the phrase "that determines net asset value using the amortized cost method permitted by § 270.2a-7" with "that operates in compliance with § 270.2a-7" because the money market funds that are subject the floating NAV requirement would not use the amortized cost method to a greater extent than mutual funds generally.

704 Each series of a series investment company is a separate investment company under the Investment Company Act. *See, e.g.*, Fair and Equitable Treatment of Series Type Investment Company Shareholders, Rel. No. IC-7276 (Aug. 8, 1972). *See also* J.R. Fleming, Regulation of Series Investment Companies under the Investment Company Act of 1940, 44 Bus. Law. 1179 (Aug. 1989).

705 *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 15, 1993), at n.19 and accompanying text.

706 *See* Dechert Comment Letter; NYC Bar Committee Comment Letter. Section 18(f)(1) of the Act generally prohibits a fund from issuing any "senior security" and section 18(i) of the Act generally requires that every share of stock issued by a fund "shall be a voting stock and have equal voting rights with every other outstanding voting stock." Rule 18f-3 under the Act provides a conditional exemption from sections 18(f)(1) and 18(i) of the Act, but Rule 18f-3 does not provide an exemption to permit a fund with multiple classes of shares to separate a class from the other class(es) and reorganize it into a separate fund, and such a reorganization may implicate the concerns underlying sections 18(f)(1) and 18(i) of the Act.

series may implicate section 18 of the Investment Company Act, as well as section 17(a) of the Investment Company Act (section 17(a) prohibits, among other things, certain transactions between a fund and an affiliated person of the fund to prevent unfairness to the fund or overreaching by the affiliated person).[707] Notwithstanding the prohibitions in sections 17(a) and 18(f)(1) and 18(i) of the Act, in the context of distinguishing between retail and institutional money market funds when implementing the reforms we are adopting today, the Commission is of the view that a reorganization of a class of a fund into a new fund may take place without separate exemptive relief, provided that the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that the reorganization results in a fair and approximately pro rata allocation of the fund's assets between the class being reorganized and the class remaining in the fund.[708] As is the case with any board determination, the basis for the fund board's determination should be documented fully in the fund's corporate minutes.[709] We believe that a reorganization accomplished in this manner would be consistent

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[707] *See* section 17(b) (setting forth, among other things, the standards for exempting a transaction from the prohibition). Section 17(a) of the Act, among other things, generally prohibits any affiliated person of a fund, acting as principal, from knowingly selling to or buying from the fund, any security or other property, with certain limited exceptions. A fund whose class of shares is being reorganized into a new fund may be an affiliated person of the new fund, due to, among other possibilities, sharing an investment adviser or board of directors. Similarly, the new fund may be an affiliated person of the fund. Accordingly, the sale of the assets of the fund to the new fund, and the new fund's purchase of those assets from the fund, in a reorganization of a class of the fund may be prohibited under sections 17(a)(1) and (2) of the Act. Rule 17a-8 under the Act provides an exemption from sections 17(a)(1) and 17(a)(2) of the Act for a transaction that is a "merger, consolidation, or purchase or sale of substantially all of the assets" of a fund that meets the rule's conditions. A reorganization of a class of a fund into a new fund may not be covered by rule 17a-8.

[708] A pro rata allocation ensures, for example, that portfolio securities with different liquidity and/or quality characteristics are distributed equally among each fund class. The board's determination requires a finding that the reorganization results in a fair and *approximately* pro rata allocation of the fund's assets in order to acknowledge that there may be limited situations in which a 100% pro rata allocation may not be practical (*e.g.*, an odd-lot portfolio security).

[709] All registered investment companies, including money market funds, must maintain as part of their records minute books for board of directors' meetings and preserve such records permanently, the first two years in

with the investor protection concerns in sections 17(a) and 18 of the Act in this context. More specifically, we believe that this board determination, in the context of a one-time reorganization related specifically to effectuating a split of separate share classes in order to qualify as a retail money market fund, addresses the primary concerns that sections 17 and 18 of the Act are intended, in part, to address—to ensure that shareholders in a fund are treated fairly and prohibit overreaching by affiliates.

The Commission's position is that, as part of implementing a reorganization in response to the amendments we are adopting today, a money market fund may involuntarily redeem certain investors that will no longer be eligible to invest in the newly established or existing money market fund. We recognize that such an involuntary redemption (or cancellation) of fund shares may implicate section 22(e) of the Act, which, among other things, generally prohibits a fund from suspending (or postponing) the right of redemption for any redeemable security for more than seven days after tender of such shares.[710] Our staff has, in the past, however, provided no-action relief under section 22(e) of the Act in similar situations (*e.g.*, where an investor's account balance falls below a certain value, provided shareholders are notified in advance).[711] Notwithstanding the prohibitions in section 22(e) of the Act, in the context of a one-time

an easily accessible place. *See* rules 31a-1(b)(4) and 31a-2(a)(1).

710 For example, if a shareholder may not redeem a portion of his shares without causing an involuntary redemption of his or her entire account balance, the shareholder may be deprived of the right to redeem that portion of his account balance, in contravention of section 22(e).

711 *See, e.g.*, Scudder Group of Funds (pub. avail. Sept. 15, 1992) (no-action relief granted to a fund that proposed to, upon providing 30 days' notice, involuntarily redeem accounts whose shareholders failed to provide taxpayer identification numbers); DFA U.S. Large Cap Portfolio Inc. (pub. avail. Sept. 7, 1990) (no-action relief provided to a fund that may, upon providing 30 days' notice, involuntarily redeem investors who failed to maintain at least $15 million in a private advisory account with the investment adviser that produced annual advisory fees of at least $100,000; Axe-Houghton Income Fund, Inc. (pub. avail. Mar. 19, 1981) (no-action relief provided to a fund that may, upon providing a number of notice and delayed effectiveness provisions, involuntarily redeem investors whose account balances fall below a prescribed threshold).

reorganization to distinguish between retail and institutional money market funds (either in separating classes into new funds or in ensuring that an existing fund only has retail or institutional investors), the Commission's position is that a fund may involuntarily redeem investors who no longer meet the eligibility requirements in a fund's retail and/or institutional money market funds without separate exemptive relief, provided that the fund notifies in writing such investors who become ineligible to invest in a particular fund at least 60 days before the redemption occurs.

Accordingly, the Commission is exercising its authority under section 6(c) of the Act to provide exemptions from these provisions of the Act to permit a money market fund to reorganize a class of a fund into a new fund in order to qualify as a retail money market fund and make certain involuntary redemptions as discussed above.[712] As discussed above, we believe that such exemptions do not implicate the concerns that Congress intended to address in enacting these provisions, and thus they are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act. We discuss the potential costs of reorganizing funds below.[713]

iii. Omnibus Account Issues

As we discussed in the Proposing Release, most money market funds do not have the ability to look through omnibus accounts to determine the characteristics of their underlying

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712 *See* section 6(c).

713 We expect that money market funds that choose to rely on our exemptive relief above and make this determination in order to separate an existing retail share class into a new fund would do so only where the fund's adviser believes it would result in cost savings as compared with the costs of establishing entirely new funds (these costs are estimated below). We do not estimate any additional costs for funds to document the board's determination that the reorganization results in a fair and approximately pro rata allocation of the fund's assets. *See supra* note 709.

investors. An omnibus account may consist of holdings of thousands of small investors in retirement plans or brokerage accounts, just one or a few institutional accounts, or a mix of the two. Omnibus accounts typically aggregate all the customer orders they receive each day, net purchases, net redemptions, and they often present a single buy and single sell order to the fund. Accordingly, omnibus accountholders may make it more difficult for a money market fund to assure itself that it is able to operate as a retail fund.[714]

A money market fund that seeks to qualify as a retail fund must have policies and procedures that are reasonably designed to limit the fund's beneficial owners to natural persons. Because an omnibus accountholder is the shareholder of record (and not the beneficial owner), retail funds will need to determine that the underlying beneficial owners of the omnibus account are natural persons. We are not prescribing the ways in which a fund may seek to satisfy the retail fund definition, including how the fund will reasonably conclude that underlying beneficial owners of an omnibus account are natural persons.[715] There are many ways for a fund to effectively manage their relationships with their intermediaries, including contractual arrangements or periodic certifications. Funds may manage these relations in the manner that best suits their circumstances. We note that a fund's policies and procedures could include, for example, relying on periodic representations of a third-party intermediary or other verification

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714 As we noted in the Proposing Release, the challenges of managing implementation of fund policies through omnibus accounts are not unique to distinguishing between retail and institutional funds. For example, funds frequently rely on intermediaries to assess, collect, and remit redemption fees charged pursuant to rule 22c-2 on beneficial owners that invest through omnibus accounts. Funds and intermediaries face similar issues when managing compliance with other fund policies, such as account size limits, breakpoints, rights of accumulation, and contingent deferred sales charges. Service providers also offer services designed to facilitate compliance and evaluation of intermediary activities.

715 We note that although it is a fund's obligation to satisfy the retail fund definition, an intermediary could nonetheless be held liable for violations of other federal securities laws, including the antifraud provisions, where institutional investors are improperly funneled into retail funds.

methods to confirm the individual's ownership interest, such as when a fund is providing investment only services to a retirement plan or an omnibus provider is unable or unwilling to share information that would identify the individual. Regardless of the specific policies and procedures followed by a fund in reasonably concluding that the underlying beneficial owners of an omnibus account are natural persons, we expect that a fund will periodically review the adequacy of such policies and procedures and the effectiveness of their implementation.[716] Accordingly, such periodic reviews would likely assist funds in detecting and correcting any gaps in funds' policies and procedures, including a fund's ability to reasonably conclude that the underlying beneficial owners of an omnibus account are natural persons. As discussed below in the economic analysis, we have included in our aggregate cost estimate costs for funds to establish policies and procedures with respect to omnibus accounts, but we expect that funds generally will rely on financial intermediaries to implement such policies (rather than, for example, entering into contractual arrangements).

iv. Economic Analysis

In addition to the costs and benefits discussed above, implementing any reform that distinguishes between retail and institutional money market funds will likely have similar effects on efficiency, competition, and capital formation, regardless of how we define a retail money market fund (or retail investor). We discussed these effects in the Proposing Release and they are described below.[717] To the extent that retail investors prefer a stable NAV money market

716 *See* rule 38a-1(a)(3).

717 Commenters did not specifically address our discussion in the Proposing Release of the effects on efficiency, competition, and capital formation. A few commenters raised concerns about the costs associated with reorganizing money market funds into separate retail and institutional funds (or series), but did not quantify those costs or object specifically to the costs we estimated in the Proposing Release. *See,*

fund, our floating NAV reform (that does not apply to retail funds) helps to maintain the utility of such a money market fund investment product. However, to the extent that funds seek to maintain a stable NAV by qualifying as a retail fund, there may be an adverse effect on capital formation if the associated costs incurred by funds are passed on to shareholders. Funds that choose to qualify as retail money market funds will incur some operational costs (discussed below) and, depending on their magnitude, these costs might affect capital formation and competition (depending on the varied ability of funds to absorb these costs).

To the extent that retail investors prefer a stable NAV product and funds seek to qualify as retail money market funds under the amended rules, there may be negative effects on competition by benefitting fund groups with large percentages of retail investors relative to other funds. The Commission estimates that, as of February 28, 2014, 39 fund complexes (or 46% of all fund complexes) have 75% or more of their total assets self-reported as "retail."[718] There also could be a negative effect on competition to the extent that certain fund groups already offer separate retail and institutional money market funds and thus might not need to reorganize an existing money market fund into two separate funds (retail and institutional). The Commission estimates that, as of February 28, 2014, there are approximately 76 fund complexes that currently offer separately designated retail and institutional money market funds (or series).[719] On the other hand, as discussed above, we believe that the majority of money market funds currently are owned by both retail and institutional investors (although many funds are separated into retail and institutional classes), and therefore relatively few funds would benefit from an existing

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e.g., Goldman Sachs Comment Letter; UBS Comment Letter.

718 Based on iMoneyNet data (39 fund complexes ÷ 84 total fund complexes reported = 46%).

719 Based on data from iMoneyNet.

structure that includes separate retail and institutional funds.

Two commenters also suggested that a bifurcation of existing assets in money market funds into retail and institutional funds might lead to a significant reduction in scale and therefore some funds may become uneconomical to operate, leading to further consolidation in the industry and a reduction in competition.[720] As noted above, many fund complexes already operate under structures that separate retail and institutional investors, either by established funds, series, or classes, and therefore demonstrate that doing so is not uneconomical. We recognize, however, that to the extent there are money market funds or fund groups that determine that it would not be economical to operate separate retail and institutional individual money market funds, there may be a reduction in competition. We believe that such effects would be relatively small, as discussed in section III.K below. Finally, we note that there may be an adverse effect on competition to the extent that large money market funds are able, based on information from broker-dealers and other intermediaries, to receive full transparency into beneficial owners. In this way, larger money market funds may find it easier to comply with their policies and procedures (and, in particular, with regard to omnibus account holders) to qualify as retail money market funds.

To the extent that money market funds are not able to distinguish effectively institutional from retail shareholders, it may have negative effects on efficiency by permitting "gaming behavior" by shareholders with institutional behavior patterns who nonetheless invest in retail funds. As discussed above, however, we believe the natural person test we are adopting reduces significantly the opportunity for "gaming behavior" when compared with our proposal. We also

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720 *See* HSBC Comment Letter; M&T Bank Comment Letter.

recognize that establishing qualifying retail money market funds may also negatively affect fund efficiency to the extent that a fund that currently separates institutional and retail investors through different classes instead would need to create separate and distinct funds, which may be less efficient.[721] The costs of such a re-organization are discussed below.

The costs and benefits of the natural person test are discussed above. In the Proposing Release, we also quantified the operational costs that money market funds, intermediaries, and money market fund service providers might incur in implementing and administering a $1 million daily redemption limit.[722] As commenters noted, however, we expect that the approach we are adopting today, based on limiting beneficial ownership to natural persons, is a simpler and more cost-effective way to achieve our goals. Commenters noted that the natural person approach provides a front-end qualifying test that effectively requires intermediaries and/or fund advisers to verify the nature of each investor only once. As a result, the natural person test reduces operational complexity and eliminates some of the need for costly programming and ongoing monitoring.[723] These commenters also noted that, although this approach will require some refinements to existing systems, these modifications will be significantly less costly than building a new system for tracking and aggregating daily shareholder redemption activity (as would be required under our proposal). Below, we quantify the estimated operational costs

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721 We provide exemptive relief from certain provisions of the Act to facilitate the ability of money market funds to convert an existing retail fund share class into a separate retail fund series. *See supra* notes 706-709 and accompanying text.

722 We estimated that the initial costs would range from $1,000,000 to $1,500,000 for each fund that chooses to qualify as a retail money market fund and that money market funds and intermediaries implementing policies and procedures to qualify as retail money market funds likely would incur ongoing costs of 20%-30% of the one-time costs, or between $200,000 and $450,000 per year. *See* Proposing Release, *supra* note 25, at nn.245 and 246 and accompanying text.

723 *See* Retail Fund Joint Comment Letter.

associated with implementing the natural person test.[724]

The Commission estimates that based on those money market funds that self-report as "retail," approximately 195 money market funds are likely to seek to qualify as a retail money market fund under our amended rules.[725] We have estimated the ranges of hours and costs associated with the natural person test that may be required to perform activities typically involved in making systems modifications, implementing fund policies and procedures, and performing related activities.[726] Although we do not have the information necessary to provide a point estimate of the potential costs associated with the natural person test, these estimates include one-time and ongoing costs to establish separate funds (or series) if necessary, modify systems and related procedures and controls, update disclosure in a fund's prospectus, as well as ongoing operational costs. All estimates are based on the staff's experience, commenter estimates, and discussions with industry representatives. We expect that only funds that determine that the benefits of qualifying as a retail money market fund justify the costs would seek to qualify and thus bear these costs. Otherwise, they would incur the costs of implementing a floating NAV generally or decide to liquidate the fund.

As discussed above, many money market funds currently are owned by both retail and

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[724] Our cost estimates are informed by the analysis in the Proposing Release, comments received, and adjusted to reflect the definition of a retail money market fund we are adopting today. *See* Proposing Release, *supra* note 25, at section III.A.4.d.

[725] Based on iMoneyNet, as of February 28, 2014.

[726] The costs estimated in this section would be spread among money market funds, intermediaries, and money market fund service providers (*e.g.*, transfer agents and custodians). For ease of reference, we refer only to money market funds and intermediaries in our discussion of these costs. As with other costs we estimate in this Release, we have estimated the costs that a single affected entity would incur. We anticipate, however, that many money market funds and intermediaries may not bear the estimated costs on an individual basis. The costs of systems modifications, for example, likely would be allocated among the multiple users of the systems, such as money market fund members of a fund group, money market funds that use the same transfer agent, and intermediaries that use systems purchased from the same third party. Accordingly, we expect that the cost for many individual entities may be less than the estimated costs.

institutional investors, although they often are separated into retail and institutional share classes. A fund that seeks to qualify as a retail money market fund under our amended rules will need to be structured to limit beneficial ownership to only natural persons, and thus any money market fund that currently has both retail and institutional shareholders would need to be reorganized into separate retail and institutional money market funds. One-time costs associated with this reorganization would include costs incurred by the fund's counsel to draft appropriate organizational documents and costs incurred by the fund's board of directors to approve such documents. One-time costs also would include the costs to update the fund's registration statement and any relevant contracts or agreements to reflect the reorganization, as well as costs to update prospectuses and to inform shareholders of the reorganization. In addition, funds may have one-time costs to obtain shareholder approval to the extent that a money market fund's charter documents and/or applicable state law require shareholder approval to effect a reorganization into separate retail and institutional money market funds.[727] Funds and intermediaries also may incur one-time costs in training staff to understand the operation of the fund and effectively implement the natural person test.

In order to qualify as a retail money market fund, a fund will be required to adopt and implement policies and procedures reasonably designed to restrict beneficial owners to natural persons. Adopting such policies and procedures and modifying systems to identify an investor as a natural person who is eligible for investment in the fund also would involve one-time costs for funds and intermediaries. Regarding omnibus accounts, the rule does not prescribe the way

[727] One commenter provided survey data suggesting that the one-time range of costs of a shareholder vote to segregate retail from institutional investors could range from \$2 million - \$5 million (57% of respondents) or \$1 million - \$2 million (14% of respondents). *See* SIFMA Comment Letter. No other commenters provided cost estimates regarding shareholder votes.

in which funds should determine that underlying beneficial owners of an omnibus account are natural persons. We note that a fund may require (as a matter of doing business) that its intermediaries implement its policies, including those related to qualification as a retail fund. However, there are also other ways for a fund to manage their relationships with their intermediaries, such as entering into a contractual arrangement or obtaining certifications from the omnibus account holder. In preparing the following cost estimates, we assumed that funds will generally rely on financial intermediaries to implement their policies without undergoing the costs of entering into a contractual arrangement with the financial intermediaries because funds and intermediaries would typically take the approach that is the least expensive. However, some funds may choose to undertake voluntarily the costs of obtaining an explicit contractual arrangement despite the expense.[728]

In our proposal, we estimated that the initial costs would range from $1,000,000 to $1,500,000 for each fund that seeks to satisfy the retail money market fund definition (as proposed, using a daily redemption limit).[729] One commenter provided specific cost estimates related to our proposal to define a retail money market fund based on a $1,000,000 daily redemption limit, estimating that it would cost the fund complex $11,200,000, or $311,000 per fund.[730]

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728 A fund might, as a general business practice, prefer to enter into a formal contractual arrangement.

729 *See supra* note 722.

730 *See* Federated X Comment Letter ("Federated would have to create new funds and fund classes in order to implement retail vs. institutional fund structures. This would cost approximately $1.7 million. In order to accomplish client outreach, effect shareholder votes, print new regulatory documents, create new sales literature and engage with investors as to the new nature of their shares and alternatives, we estimate that Federated will expend another $4 million. Revisiting and revising contractual relationships with broker-dealers and other intermediaries to provide for enforcement of the $1 million redemption limit would cost a further $1.3 million. Charges from independent pricing services, custodians, record-keepers, and transfer

Based on staff experience and review of the comments received, as well as the changes to the retail definition in the final amendments, we estimate that the one-time costs necessary to implement policies and procedures and/or for a fund to qualify as a retail money market fund under our amended rules, including the various organizational, operational, training, and other costs discussed above, will range from $830,000 to $1,300,000 per entity.[731] Our estimates represent a decrease of $170,000 on the low end, and a decrease of $200,000 on the high end from our proposed range of estimated operational costs.[732] Our revised cost estimates reflect, as noted by commenters, a more cost-effective way to define a retail money market fund. Accordingly, our cost estimates take into account the fact that most money market funds will largely be able to satisfy the natural person test using information that funds already collect and

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agents are expected at nearly $3 million. Upgrades to Federated's internal systems and systems that interface with customers and transfer agents would cost another $1.2 million."). These costs total $11,200,000. Averaged across the number of money market funds offered, this commenter estimates the one-time implementation costs to be $311,000 per fund ($11,200,000 ÷ 36 money market funds). *See supra* note 586 (using Form N-MFP data, Federated manages 36 money market funds).

731 Estimates also include costs to intermediaries to implement systems and procedures to satisfy money market fund requirements regarding omnibus accounts. We estimate that the costs would be attributable to the following activities: (i) planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls and documents necessary to reorganize fund structures into retail and institutional funds; and (iii) preparing training materials and administering training sessions for staff in affected areas. Our estimates of these operational and related costs, and those discussed throughout this Release, are based on, among other things, staff experience implementing, or overseeing the implementation of, systems modifications and related work at mutual fund complexes, and included analyses of wage information from SIFMA's Management & Professional Earnings in the Securities Industry 2013 at *infra* note 2214. *See infra* note 2228 for the various types of professionals we estimate would be involved in performing the activities associated with our proposals. The actual costs associated with each of these activities would depend on a number of factors, including variations in the functionality, sophistication, and level of automation of existing systems and related procedures and controls, and the complexity of the operating environment in which these systems operate. Our estimates generally are based on our assumption that funds would use internal resources because we believe that a money market fund (or other affected entity) would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs. The total operational costs discussed here include the costs that are "collections of information" that are discussed in section IV.A.2 of this Release.

732 These amounts are calculated as follows: $1,000,000 (proposed) - $830,000 = $170,000 (low end); $1,500,000 (proposed) - $1,300,000 = $200,000 (high end). *See* Proposing Release, *supra* note 25, at n.245 and accompanying text.

have readily available, and reduce the estimated amount of resources necessary, for example, to program systems capable of tracking and aggregating daily shareholder redemption activity (that would have been required under our proposal).[733]

In addition to these one-time costs, as discussed above, funds may have one-time costs to obtain shareholder approval to the extent that a money market fund's charter documents and/or applicable state law require shareholder approval to effect a reorganization into separate retail and institutional money market funds. One commenter provided survey data that estimated the one-time costs would be between $1,000,000 to $5,000,000.[734] We note, however, that the survey respondents are asset managers, many of whom may be responsible for fund complexes, and it is not clear whether these cost estimates represent costs to a fund complex or to a single fund. Although the Commission does not have the information necessary to estimate the number of funds that may seek shareholder approval to effect a reorganization, we estimate that it will cost, on average, approximately $100,000 per fund in connection with a shareholder vote.[735] Finally, money market funds that seek to qualify as retail funds will be required to adopt policies and procedures that are reasonably designed to limit beneficial owners of the fund to natural persons. As discussed in section IV.A.2 (Retail Funds) below, we estimate that the initial time costs associated with adopting policies and procedures will be $492,800 for all fund complexes.

Funds that intend to qualify as retail money market funds will also incur ongoing costs.

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733 *See supra* notes 722-724 and accompanying text.

734 *See supra* note 727.

735 Our estimate is based on the most recently approved Paperwork Reduction Act renewal for rule 17a-8 under the Act (Mergers of Affiliated Companies), OMB Control No. 3235-0235, available at http://reginfo.gov/public/do/PRAViewICR?ref_nbr=201304-3235-015. Our estimate includes legal, mailing, printing, solicitation, and tabulation costs in connection with a shareholder vote.

These ongoing costs would include the costs of operating two separate funds (retail and institutional) instead of separate classes of a single fund, such as additional transfer agent, accounting, and other similar costs. Other ongoing costs may include systems maintenance, periodic review and updates of policies and procedures, and additional staff training. Finally, our estimates include ongoing costs for funds to manage and monitor intermediaries' compliance with fund policies regarding omnibus accounts. Accordingly, we continue to estimate, as we did in the proposal, that money market funds and intermediaries likely will incur ongoing costs related to implementation of a retail money market fund definition of 20%-30% of the one-time costs, or between $166,000 and $390,000 per year.[736] We received no comments on this aspect of our proposal.

3. *Municipal Money Market Funds*

Both the fees and gates reform and floating NAV reform will apply to municipal money market funds (or tax-exempt funds[737]). We discuss below the key characteristics of tax-exempt funds, commenter concerns regarding our proposal (and final amendments) to apply the fees and gates and floating NAV reforms to tax-exempt funds, and an analysis of potential economic effects. We note, as addressed below, that the majority of the comments received relating to tax-exempt funds were given in the context of our floating NAV reform.[738]

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736 We recognize that adding new capabilities or capacity to a system (including modifications to related procedures and controls and related training) will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of the initial costs of building or modifying a system.

737 "Municipal money market fund" and "tax-exempt fund" are used interchangeably throughout this Release. A municipal money market fund that qualifies as a retail money market fund would not be subject to the floating NAV reform. *See supra* section III.C.2.

738 Section III.C.7 below discusses more general reasons for not excluding specific types of money market funds from the fees and gates amendments. These reasons apply equally to our analysis of municipal money market funds and the fees and gates amendments.

a. Background

Tax-exempt funds primarily hold obligations of state and local governments and their instrumentalities, which pay interest that generally is exempt from federal income taxes.[739] Thus, the majority of investors in tax-exempt money market funds are those investors who are subject to federal income tax and therefore can benefit from the funds' tax-exempt interest. As discussed below, state and local governments rely in part on tax-exempt funds to fund public projects.[740] As of February 28, 2014, tax-exempt funds held approximately $279 billion of assets, out of approximately $3.0 trillion in total money market fund assets.[741]

Industry data suggests institutional investors hold approximately 29% ($82 billion) of municipal money market fund assets.[742] This estimate is likely high, as omnibus accounts (which often represent retail investors) are often categorized as institutional by third-party researchers. One commenter, for example, surveyed its institutional tax-exempt money market funds, and found that approximately 50% of the assets in these "institutional" funds were beneficially owned by institutions.[743]

On average, over 70% of tax-exempt funds' assets (valued based upon amortized cost) are comprised of municipal securities issued as variable-rate demand notes ("VRDNs").[744] The

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739 *See* 2009 Proposing Release, *supra* note 66.

740 *See infra* section III.C.3.c; *see also* INVESTMENT COMPANY INSTITUTE, REPORT OF THE MONEY MARKET WORKING GROUP, at 18 (Mar. 17, 2009), *available at* http://www.ici.org/pdf/ppr_09_mmwg.pdf ("ICI REPORT").

741 Based on data from Form N-MFP.

742 Based on data from iMoneyNet and Form N-MFP as of February 28, 2014. *See supra* note 683.

743 *See* Comment Letter of the Dreyfus Corporation (Mar. 5, 2014) ("Dreyfus II Comment Letter").

744 Based on Form N-MFP data as of February 28, 2014 (the remaining holdings are "other municipal debt").

interest rates on VRDNs are typically reset either daily or every seven days.[745] VRDNs include a demand feature that provides the investor with the option to put the issue back to the trustee at a price of par value plus accrued interest.[746] This demand feature is supported by a liquidity facility such as letters of credit, lines of credit, or standby purchase agreements provided by financial institutions.[747] The interest-rate reset and demand features shorten the duration of the security and allow it to qualify as an eligible security under rule 2a-7. Tax-exempt funds also invest in tender option bonds ("TOBs"), which typically are floating rate securities that provide the holder with a put option at par, supported by a liquidity facility provided by a commercial bank.[748]

b. <u>Discussion</u>

In the Proposing Release, we noted that because most municipal money market funds tend to be owned by retail investors, who are among the greatest beneficiaries of the funds' tax advantages, most tax-exempt funds would qualify under our proposed definition of retail money market fund and therefore would continue to offer a stable share price.[749] We stated that, although there are some tax-exempt money market funds that self-classify as institutional funds, we believed these funds' shareholder base typically is comprised of omnibus accounts with

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745 *See* Frank J. Fabozzi & Steven V. Mann eds, HANDBOOK OF FIXED INCOME SECURITIES 237 (8th ed. 2012).

746 *Id.*

747 *See* Neil O'Hara, THE FUNDAMENTALS OF MUNICIPAL BONDS 40-41 (6th ed. 2012).

748 *See id.* at 43-44.

749 A few commenters noted that, in addition to individuals, corporations, partnerships, and other business entities may enjoy the tax benefits of investments in tax-exempt funds. *See, e.g.*, Comment Letter of Federated Investors (Regulation of Tax-Exempt Money Market Funds) (Sept. 16, 2013) ("Federated VII Comment Letter"). One commenter noted that, while corporations may not enjoy the tax advantages afforded under the Internal Revenue Code to exempt dividends to the full degree that individuals can enjoy them, eligible corporations can benefit from a tax exemption under certain conditions (such as meeting a minimum holding period). *See* Dreyfus II Comment Letter.

underlying individual investors. As noted by commenters and discussed below, we now understand that only some (and not all) of these funds' shareholder base is comprised of omnibus accounts with underlying individual investors. We also stated our belief that, like many securities in prime funds, municipal securities present greater credit and liquidity risk than U.S. government securities and could come under pressure in times of stress.

Many commenters suggested that we not apply our floating NAV reform[750] or our fees and gates reform[751] to municipal money market funds. Commenters raised specific concerns about the ability and extent to which tax-exempt funds would qualify as retail money market funds as proposed (and therefore be permitted to maintain a stable NAV). Several commenters noted that high-net-worth individuals, who often invest in tax-exempt funds because of the tax benefits, engage in periodic transactions that exceed the proposed $1 million daily redemption limit, which would effectively disqualify them from investing in a retail municipal fund, as proposed.[752] We are addressing these concerns by adopting a definition of retail money market fund that will allow many of these individuals to invest in tax-exempt funds that offer a stable NAV. Funds that wish to qualify as retail money market funds will be required to limit beneficial ownership interests to "natural persons" (*e.g.*, individual accounts registered with social security numbers). Because the retail money market fund definition is not conditioned on a daily redemption limitation, but instead requires that retail money market funds restrict beneficial ownership to natural persons, high-net-worth individuals will not be subject to a

750 *See, e.g.*, BlackRock II Comment Letter; Fidelity Comment Letter; ICI Comment Letter.

751 *See, e.g.*, ICI Comment Letter; J.P. Morgan Comment Letter; Vanguard Comment Letter; *see also* Dreyfus II Comment Letter, (suggesting the fees and gates requirements should be limited to taxable prime funds); Legg Mason & Western Asset Comment Letter.

752 *See, e.g.*, Fidelity Comment Letter; Dechert Comment Letter; Fin. Svcs. Roundtable Comment Letter.

redemption limit and thus should be able to continue investing in tax-exempt funds much like they do today.[753]

Several commenters expressed concern that a number of municipal money market funds would not qualify as retail money market funds, as proposed, because institutional investors hold them. Commenters noted that approximately 30% (and historically between 25% and 40%[754]) of tax-exempt funds currently self-report as institutional funds.[755] We understand that some but not all of these funds' shareholder base is comprised of omnibus accounts with underlying individual investors. A number of commenters supported the view that most investors in tax-exempt funds are individuals.[756] One commenter stated its belief, however, that institutions rather than individuals or natural persons beneficially own a significant, if not majority, portion of the assets invested in these self-reported institutional tax-exempt funds.[757] Although we understand that some omnibus accounts may be comprised of institutions without underlying individual beneficial owners, the lack of a statutory or regulatory definition of institutional and retail funds, along with a lack of information regarding investor attributes in omnibus accounts, prevents us from estimating with precision the portion of investors and assets in tax-exempt funds that self-

753 Tax-exempt funds would, however, be potentially subject to our fees and gates reform.

754 Our staff's analysis, based on iMoneyNet data, shows that the amount of municipal money market fund assets held by institutional investors varied between 25% to 43% between 2001 to 2013.

755 *See, e.g.*, BlackRock II Comment Letter; Federated VII Comment Letter; J.P. Morgan Comment Letter; Dreyfus II Comment Letter.

756 *See, e.g.*, T. Rowe Price Comment Letter ("[t]he tax-exempt money market is retail-dominated"); Schwab Comment Letter; SIFMA Comment Letter.

757 *See* Dreyfus II Comment Letter, *supra* note 743 and accompanying text. This commenter provided data suggesting that approximately 50% of the assets of its self-reported "institutional" tax-exempt funds are beneficially owned by institutional investors. We acknowledge that certain tax-exempt funds may be beneficially owned by a large number of institutional investors. However, this data, which reflects only an analysis of this commenter's money market funds (rather than industry-wide data), does not necessarily support a finding that a majority of such assets is "institutional" in nature.

report as institutional that are beneficially owned by institutions. As discussed above, however, industry data suggests that approximately 30% of municipal money market fund assets are held by institutional investors–investors that may not qualify to invest in a retail municipal money market fund.[758]

Several commenters argued that tax-exempt funds should not be subject to the fees and gates and floating NAV reforms because the municipal money market fund industry is not systemically risky. In support, commenters pointed to the relatively small amount of assets managed by municipal money market funds, the stability of tax-exempt funds during recent periods of market stress, and the diversity of the municipal issuer market.[759] As discussed above, we acknowledge that the current institutional municipal money market fund industry is small relative to the overall money market fund industry. Despite its relatively small size, however, we are concerned that institutional investors that currently hold prime funds might be incentivized to shift assets from prime funds to municipal money market funds as an alternative stable NAV investment. This could undermine the goals of reform with respect to the floating NAV requirement by providing an easy way for institutional investors to keep stable value pricing while continuing to invest in funds with assets that, relatively speaking, have a risk character that is significantly closer to prime funds than government funds.[760]

Commenters argued that historical shareholder flows in municipal money market funds,

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758 *See supra* note 742.

759 *See, e.g.*, Fidelity Comment Letter; Schwab Comment Letter; Deutsche Comment Letter; T. Rowe Price Comment Letter; Dreyfus Comment Letter.

760 In addition, as discussed below, municipal money market funds may be subject to heavy redemptions, even if they have not been in the past. The fees and gates amendments are intended to give funds and their boards tools to stem such heavy redemptions.

as well as their past resiliency, demonstrate that they are not prone to runs or especially risky.[761] They pointed out that shareholder flows from tax-exempt funds were moderate during times of recent market stress compared to significant outflows from institutional prime money market funds.[762] A review of money market fund industry asset flows during the market stress in 2008 and 2011 shows that tax-exempt funds remained relatively flat and tracked investor flows in other retail prime funds.[763] We believe that some of this stability may be attributable to municipal money market funds' significant retail investor base rather than low portfolio risk.[764] In this regard, we note that although investors did not flee municipal funds in times of market stress, they also did not move assets into municipal funds as they did into government funds.[765] Accordingly, it appears that those investors did not perceive the risk characteristics of municipal funds to be similar to those of government funds. Consistent with this observation, our analysis indicates that the shadow price of tax-exempt funds is distributed more similarly to that of prime funds than government funds.[766] Specifically, the volatility of the distribution of municipal

761 *See, e.g.,* Fidelity Comment Letter (noting that, more recently, the largest municipal bankruptcy (City of Detroit) had no discernible effects on money market funds); ICI Comment Letter; J.P. Morgan Comment Letter. A number of commenters also noted that during these periods of market stress, tax-exempt funds did not experience contagion from heavy redemptions like those experienced by institutional prime funds. *See, e.g.,* ICI Comment Letter (noting that a tax-exempt fund sponsored by Lehman Brothers (the Neuberger Berman Tax-Free Fund) had two-thirds of its total net assets redeemed, but had no ripple effect on other tax-exempt funds or the broader municipal market); Dechert Comment Letter; BlackRock II Comment Letter.

762 *Id.*

763 *See* iMoneyNet (analyzing money market fund industry flows from September 12 – December 19, 2008 and June 1 – November 16, 2011). *See* also DERA Study, *supra* note 24, at 11, Figure 3.

764 *See* ICI Comment Letter (stating that "[t]he calm response of tax-exempt money market fund investors to events in Detroit is characteristic of how *retail* [emphasis added] investors are generally perceived to respond to market stresses.").

765 *See* DERA Study, *supra* note 24, at 7-8.

766 Using data collected from Form N-MFP and iMoneyNet, the standard deviation of shadow prices (which is a measure used to assess the overall riskiness of a fund) estimated over the time period from November 2010 to February 2014 are 0.00023, 0.00039, and 0.00052 for government, prime, and tax-exempt funds,

money market fund shadow prices is significantly larger than the volatility of government funds.[767] In addition, our staff's analysis of historical shadow prices shows that tax-exempt funds are more likely than government funds to experience large losses.[768] Thus, we believe municipal funds are more similar in nature to prime funds than government funds for purposes of the floating NAV reform.

Several commenters noted that the diversity of the municipal issuer market reduces the risks associated with municipal money market funds.[769] We note that although there is some diversity among the direct issuers of municipal securities, the providers of most of the demand features for the VRDNs, most of which are financial services firms, are highly concentrated.[770] This is a significant countervailing consideration because VRDNs comprise the majority of tax-exempt funds' portfolios.[771] This level of concentration increases municipal funds' exposure to financial sector risk relative to, for example, government funds.[772] And, in this regard, we are mindful of the potential for increased sector risk to the financial services firms that provide the demand features if investors reallocate assets to tax-exempt funds that are not subject to the fees

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respectively. This data shows that the standard deviation of tax-exempt funds is statistically significantly larger than the other two types of funds with a 99% confidence level. Furthermore, the frequency at which the shadow prices for tax-exempt funds is less than 1.000 is greater than for government funds and is increasing at lower shadow price values. Accordingly, this means that the likelihood for large negative returns and hence large losses is greater for tax-exempt funds than for government funds.

767 *Id.*

768 *Id.*

769 *See supra* note 759 and accompanying text.

770 *See* DERA memo "Municipal Money Market Funds Exposure to Parents of Guarantors" http://www.sec.gov/comments/s7-03-13/s70313-323.pdf.

771 *See supra* note 744 and accompanying text.

772 Based on a review of Form N-MFP data as of February 28, 2014, over 10% of the amortized cost value of VRDNs are guaranteed by a single bank, and approximately 54% of the amortized cost value is guaranteed by 10 banks.

and gates and floating NAV reforms.

A number of commenters cited the resilient portfolio construction of municipal money market funds and argued that the liquidity risk, interest rate risk, issuer risk, and credit/default risk of tax-exempt funds are more similar to government funds than prime funds.[773] As discussed above, however, staff analysis shows that the distribution of fluctuations in the shadow NAV of tax-exempt funds is more similar to that of prime funds than government funds.[774] Municipal securities typically present greater credit and liquidity risk than government securities.[775] We believe that recent municipal bankruptcies have highlighted liquidity concerns related to municipal money market funds and note that, although municipal money market funds have previously weathered these events, there is no guarantee that they will be able to do so in the future.

Further, although we recognize that the structural features of VRDNs may provide tax-exempt funds with higher levels of weekly liquid assets and reduced interest rate risk as compared with prime funds, we do not find that on balance that warrants treating municipal funds more like government funds than prime funds. This is so because, among other things, the

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773 *See, e.g.*, Fidelity Comment Letter (weekly liquid assets of tax-exempt funds is typically more than double the current 30% requirement under rule 2a-7). *See also, e.g.*, ICI Comment Letter; SIFMA Comment Letter; Invesco Comment Letter; Legg Mason & Western Asset Comment Letter. Interest rate risk, as measured by weighted average maturity, is consistently lower for tax-exempt funds (averaging 35 days, well below the 60-day requirement in rule 2a-7) than prime and government funds. *See* Fidelity Comment Letter (citing iMoneyNet). Commenters also argued that the credit risk of tax-exempt funds is more similar to government funds than prime funds. *See, e.g.,* ICI Comment Letter (tax-exempt securities have low credit risk because municipalities are not generally interconnected and deterioration occurs over a protracted time); Dreyfus Comment Letter (many distressed issues (*e.g.*, City of Detroit) become ineligible under rule 2a-7s risk-limiting conditions and therefore bankruptcy does not affect direct holdings of tax-exempt funds).

774 *See supra* note 766.

775 *See, e.g.*, Notice of the City of Detroit, Michigan's bankruptcy filing with the United States Bankruptcy Court, Eastern District of Michigan, *available at* http://www.mieb.uscourts.gov/sites/default/files/detroit/Chp%209%20Detroit.pdf.

liquidity risk, interest rate risk, and credit risk characteristics result from concentrated exposure to VRDNs, and not because the municipal debt securities underlying the VRDNs or the related structural support are inherently liquid, free from interest rate risk, or immune from credit risks in the way that government securities generally are.[776] Indeed, long-term municipal debt securities underlie most VRDNs, and these securities infrequently trade.[777] Instead, the liquidity is provided through the demand feature to a concentrated number of financial institutions, and money market funds have experienced problems in the past when a large number of puts on securities were exercised at the same time.[778]

In fact, when we adopted the 2010 amendments to rule 2a-7, we cited to commenter concerns regarding the market structure of VRDNs and heavy reliance of tax-exempt funds on these security investments in determining not to require that municipal money market funds meet the 10% daily liquid asset requirement that other money market funds must satisfy.[779] Commenters did not generally support adding such a requirement, but the lack of a mandated supply of daily liquid assets leaves these funds more exposed to potential increases in redemptions in times of fund and market stress.[780] As a result, the portfolio composition of some

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776 *See supra* note 744 and accompanying text.

777 *See supra* notes 744-748 and accompanying text.

778 *See* DERA Study, *supra* note 24, at Table 1(discussing how money market funds were adversely affected because of credit events that resulted in large numbers of securities being "put" back to demand feature providers, which resulted in bankruptcy, including Mutual Benefit Life Insurance Company and General American Life Insurance Co.).

779 *See* 2010 Adopting Release, *supra* note 17, at nn.240-243 and accompanying text.

780 *See* Fidelity Comment Letter; *but see* Wells Fargo Comment Letter. We note also that new regulations also may affect the issuance of the dominant types of securities that now provide the stability of tax-exempt funds. For example, because TOB programs are not exempt from the Volcker rule, banks and their affiliates will no longer be able to sponsor or provide support to a TOB program. *See* Volcker Rule, *infra* note 782. As a result, the portfolio composition of some tax-exempt funds may change and present different risks in the future.

tax-exempt funds may change and present different risks in the future. In addition, because of the daily liquidity issues associated with VRDNs and the fact that tax-exempt money market funds are not required to maintain 10% daily liquid assets,[781] these funds in particular may experience stress on their liquidity necessitating the use of fees and gates to manage redemptions (even with respect to the lower level of redemptions expected in a tax-exempt retail money market fund as compared to an institutional prime fund).

Several commenters also argued that certain structural features of tax-exempt funds make them more stable than prime money market funds and therefore these commenters believe that the floating NAV reform should not apply to tax-exempt funds. For example, these commenters observed that a tax-exempt fund's investments, primarily VRDNs, and, to a lesser extent, TOBs,[782] have structural features (*e.g.*, contractual credit enhancements or liquidity support provided by highly rated banks and one-to-seven day interest rate resets) that facilitate trading at par in the secondary market.[783] We agree that these features lower the risk of portfolio holdings as compared to prime money market funds, but also recognize that holding municipal money market funds presents higher risks than those associated with government or Treasury funds. Not all VRDNs have credit support,[784] and tax-exempt funds present credit risk.[785] Accordingly,

781 *See* rule 2a-7(d)(4)(ii).

782 Participation by banks and their affiliates in TOB programs are subject to the prohibitions and restrictions applicable to covered funds under the recently adopted Volcker Rule (implemented by Title VI of the Dodd-Frank Act, named for former Federal Reserve Chairman Paul Volcker, Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1851) ("Volcker Rule")).

783 *See, e.g.*, Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter.

784 Based on Form N-MFP data as of February 28, 2014, only 57% of VRDNs, which make up a majority of the assets in municipal money market funds, have a guarantee that protects a fund in case of default. In comparison, the federal government guarantees all government securities held by government funds.

785 Credit risk may result from the financial health of the issuer itself, such as when the city of Detroit recently filed for bankruptcy, becoming the largest municipal issuer default in U.S. history, leading to significant

we do not agree with commenters that, as noted above, suggest that the credit risk of tax-exempt funds is more similar to government funds than prime funds.

For all of the above reasons, we believe that tax-exempt funds should be subject to the fees and gates and floating NAV reforms. As discussed, the risk profile of institutional municipal money market funds more closely approximates that of prime funds than government funds. Tax-exempt funds present credit risk, typically rely on a concentrated number of financial sector put or guarantee providers, and have portfolios comprised largely of a single type of structured investment product—all of which may present future risks that may be exacerbated by a potential migration of investors from prime funds that are unable or unwilling to invest in a floating NAV money market fund or money market fund that may impose fees and gates. Accordingly, we believe that tax-exempt funds should be subject to the fees and gates and

outflows from municipal bond funds. *See* Jeff Benjamin, *Detroit bankruptcy has surprising long-term implications for muni bond market,* CRAIN'S DETROIT BUSINESS (Dec. 3, 2013) http://www.crainsdetroit.com/article/20131203/NEWS/131209950/detroit-bankruptcy-has-surprising-long-term-implications-for-muni#. Although Detroit's credit deteriorated over a long period of time and thus the bankruptcy did not cause tax-exempt money market funds, which had largely anticipated the event, to experience significant losses, in the past there have not have not been significant lead times before a municipality evidenced a credit deterioration. *See, e.g.,* ICI Comment Letter. For example, Orange County, California, had high-quality bond credit ratings just before filing one of the largest municipal bankruptcies in U.S. history on December 6, 1994. *See* HANDBOOK OF FIXED INCOME SECURITIES, *supra* note 745, at 239. Orange County caused one money market fund to break the buck and several sponsors to inject millions of dollars of additional cash to rescue their funds. *See, e.g.*, Viral V. Acharya et al, REGULATING WALL STREET: THE DODD-FRANK ACT AND THE NEW ARCHITECTURE OF GLOBAL FINANCE 308 (2011); *see also* Suzanne Barlyn, *Investing Strategy What the Orange County Fiasco Means to the Muni Bond Market*, FORTUNE (Jan. 16, 1995), http://archive.fortune.com/magazines/fortune/fortune_archive/1995/01/16/201819/index.htm. Another type of credit risk arises when financial institutions provide credit enhancement to municipal securities. For example, in 1992, Mutual Benefit Life Insurance Company ("Mutual Benefit") went into conservatorship with the New Jersey Insurance Commissioner. The company had guaranteed forty-three municipal bond issues totaling $600 million, which financed money-losing real estate projects. Mutual Benefit's insolvency resulted in the termination of its guarantee on the bonds and halted interest payments resulting in losses for investors. *See* C. Richard Lehmann, *Municipal Bond Defaults, in* THE HANDBOOK OF MUNICIPAL BONDS 509 (Susan C. Heide et al. eds., 1994).

floating NAV reforms adopted today.[786]

c. Economic Analysis of FNAV

Although we expect that many tax-exempt funds will qualify as retail money market funds and therefore be able to maintain a stable NAV (as they do today), there are, as we discussed above, some institutional investors in municipal money market funds that may be unable or unwilling to invest in a floating NAV fund.[787] To the extent that institutional investors continue to invest in a floating NAV municipal money market fund, the benefits of a floating NAV discussed in section III.B extend to these types of funds. Because a floating NAV requirement may reduce investment in those funds, however, we recognize that there will likely be costs for the sponsors of tax-exempt funds, the institutions that invest in these types of funds, and tax-exempt issuers. These costs are the same as those described in section III.B for institutional prime funds and the costs described in section III.I for corporate issuers.

To the extent that institutions currently invest in tax-exempt funds and are unwilling to invest in a floating NAV tax-exempt fund, the demand for municipal securities, for example, may fall and the costs of financing for municipalities may rise.[788] We anticipate the impact,

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786 Our rationale is consistent with our finding, discussed above, that we no longer believe that exempting institutional prime money market funds under section 6(c) of the Act is appropriate. *See supra* note 446 and accompanying text.

787 We believe that the economic analysis that follows would apply equally in the context of the fees and gates reform. For a discussion of the economic implications that may arise for investors, including retail investors who may be unable or unwilling to invest in a fund that can impose fees and gates, including potential implications on state and local funding, *see infra* section III.K.

788 A number of commenters argued that applying our floating NAV reform to tax-exempt funds would reduce demand for municipal securities and raise the costs of financing. *See, e.g.*, Fidelity Comment Letter (noting that tax-exempt funds purchase approximately 65% of short-term municipal securities and that fewer institutional investors in tax-exempt funds will lead to less purchasing of short-term municipal securities by tax-exempt funds and a corresponding higher yield paid by municipal issuers to attract new investors); BlackRock II Comment Letter; Federated VII Comment Letter; ICI Comment Letter; Comment Letter of Mayors, City of Irving, TX, et al (Sept. 12, 2013) ("U.S. Mayors Comment Letter").

however, will likely be relatively small. As of the last quarter of 2012, tax-exempt funds held approximately 7% of the municipal debt outstanding.[789] Of that 7%, institutional investors, who might divest their municipal fund assets if they do not want to invest in a floating NAV fund, held approximately 30% of municipal money market fund assets.[790] Accordingly, we estimate institutional tax-exempt funds hold approximately 2% of the total municipal debt outstanding and thus 2% is at risk of leaving the municipal debt market.[791] Although this could impact capital formation for municipalities, there are several reasons to believe that the impact would likely be small (including minimal impact on efficiency and competition, if any). First, institutional investors that currently invest in municipal funds likely value the tax benefits of these funds and many may choose to remain invested in them to take advantage of the tax benefits even though they might otherwise prefer stable to floating NAV funds. Second, to the extent that institutional investors divesting municipal funds lead to a decreased demand for municipal debt instruments, other investors may fill the gap. As discussed in the Proposing Release, "Between the end of 2008 and the end of 2012, money market funds decreased their holdings of municipal debt by 34% or $172.8 billion.[792] Despite this reduction in holdings by money market funds, municipal issuers increased aggregate borrowings by over 4% between the end of 2008 and the end of 2012. Municipalities were able to fill the gap by attracting other investor types. Other types of

789 Other published data is consistent with this estimate. See, for example, the Federal Reserve Board "Flow of Funds Accounts of the United States" (Z.1), which details the flows and levels of municipal securities and loans, to estimate outstanding municipal debt (March 6, 2014), available at http://www.federalreserve.gov/releases/z1/current/. These estimates are consistent with previous estimates presented in U.S. Securities and Exchange Commission. 2012 *Report on the Municipal Securities Market.* The estimates in the 2012 report were based on data from Mergent's Municipal Bond Securities Database.

790 *See supra* note 742 and accompanying text.

791 This estimate is calculated as follows: tax-exempt funds hold 7% of municipal debt outstanding x 30% of tax-exempt assets held by institutional investors = 2.1% of total tax-exempt debt held by institutions.

792 The statistics in this paragraph are based on the Federal Reserve Board's Flow of Funds data.

mutual funds, for example, increased their municipal securities holdings by 61% or $238.6 billion."[793]

Although institutional municipal funds represent a relatively small portion of the municipal debt market, we recognize that these funds represent a significant portion of the short-term municipal debt market.[794] According to Form N-MFP data, municipal money market funds held $256 billion in VRDNs and short-term municipal debt as of the last quarter of 2013.[795] Effectively, municipal money market funds absorbed nearly 100% of the outstanding VRDNs and short-term municipal debt. Considering that institutional tax-exempt funds represented approximately 30% of the municipal money market fund market, it follows that institutional tax-exempt funds likely held about $77 billion in VRDNs and short-term municipal debt. Any reduction in municipal funds therefore could have an appreciable impact on the ability of municipalities to obtain short-term lending. That said, this impact could be substantially mitigated because, as discussed above, other market participants may buy these securities or municipalities will adapt to a changing market by, for example, altering their debt structure. As discussed in the Proposing Release, "[t]o make their issues attractive to alternative lenders, municipalities lengthened the terms of some of their debt securities,"[796] in the face of changing market conditions in recent years. To the extent that other market participants step in and fill the potential gap in demand, competition may increase. To the extent other market participants do not step in and fill the gap, capital formation may be adversely affected. Finally, if

[793] *See* Proposing Release, *supra* note 25, at 309.

[794] *See, e.g.*, BlackRock II Comment Letter; Dreyfus Comment Letter.

[795] Based on data from N-MFP and iMoneyNet.

[796] *See* Proposing Release, *supra* note 25, at 309.

municipalities are required to alter their debt structure to foster demand for their securities (*e.g.*, because demand declined as a result of our amendments), there may be an adverse effect on efficiency. Although we discuss above ways in which the short-term municipal debt market may adapt to continue to raise capital as it does today, we acknowledge that our floating NAV reform will impact institutional investors in tax-exempt funds and therefore likely impact the short-term municipal markets. On balance, however, we believe that realizing the goals of this rulemaking, including recognizing the concerns discussed above with respect to the risks presented by tax-exempt funds, justifies the potential adverse effects on efficiency, competition, and capital formation.

4. Implications for Local Government Investment Pools

As we discussed in the Proposing Release, we recognize that many states have established local government investment pools ("LGIPs"), money market fund-like investment pools that invest in short-term securities,[797] which are required by law or investment policies to maintain a stable NAV per share.[798] Accordingly, as we discussed in the Proposing Release, the floating NAV reform may have implications for LGIPs, including the possibility that state statutes and policies may need to be amended to permit the operation of investment pools that

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797 LGIPs tend to emulate typical money market funds by maintaining a stable NAV per share through investments in short-term securities. *See infra* III.K.1, Table 1, note N.

798 *See, e.g.*, Comment Letter of U.S. Chamber of Commerce to the Hon. Elisse Walter (Feb. 13, 2013) ("Chamber III Comment Letter"), *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2013-2.13-Floating-NAV-Qs-Letter.pdf. *See also, e.g.,* Virginia's Local Government Investment Pool Act, which sets certain prudential investment standards but leaves it to the state treasury board to formulate specific investment policies for Virginia's LGIP. *See* Va. Code Ann. § 2.2-4605(A)(3). Accordingly, the treasury board instituted a policy of managing Virginia's LGIP in accordance with "certain risk-limiting provisions to maintain a stable net asset value at $1.00 per share" and "GASB '2a-7 like' requirements." Virginia LGIP's Investment Circular, June 30, 2012, *available at* http://www.trs.virginia.gov/cash/lgip.aspx. Not all LGIPs are currently managed to maintain a stable NAV, however, *see infra* section III.K.1, Table 1, note N.

adhere to amended rule 2a-7.[799] In addition, some commenters suggested that our floating NAV reform, as well as the liquidity fees and gates requirement, may result in outflows of LGIP assets into alternative investments that provide a stable NAV and/or do not restrict liquidity.[800]

A few commenters noted that it is the GASB reference to "2a-7 like" funds that links LGIPs to rule 2a-7, and not state statutes.[801] Some commenters noted that our money market fund reforms do not directly affect LGIPs because the decision as to whether LGIPs follow our changes to rule 2a-7 is determined by GASB and the states, not the Commission.[802] Some commenters suggested that, in response to our floating NAV reform, GASB and the states might decouple LGIP regulation from rule 2a-7 and continue to operate at a stable value.[803] A few commenters suggested that we make clear that the changes we are adopting to rule 2a-7 are not intended to apply to LGIPs,[804] and also reiterated concerns similar to those raised by other commenters on our floating NAV reform more generally (*e.g.*, concerns about using market-based valuation, rather than amortized cost).[805]

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799 GASB states that LGIPs that are operated in a manner consistent with rule 2a-7 (*i.e.*, a "2a-7-like pool") may use amortized cost to value securities (and presumably, facilitate maintaining a stable NAV per share). *See* GASB, Statement No. 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools (Mar. 1997).

800 *See, e.g.*, Comment Letter of TRACS Financial/Institute of Public Investment Management (Sept. 17, 2013) ("TRACS Financial Comment Letter"); Comment Letter of Treasurer, State of Georgia (Sept. 16, 2013) ("Ga. Treasurer Comment Letter"); Comment Letter of County of San Diego Treasurer-Tax Collector (Sept. 17, 2013) ("San Diego Treasurer Comment Letter"). Because we are unable to predict how GASB will respond to our final amendments to rule 2a-7, we cannot quantify the extent to which LGIP assets may migrate into alternative investments.

801 *See, e.g.*, TRACS Financial Comment Letter; Federated IX Comment Letter.

802 *See, e.g.*, Federated II Comment Letter; Ga. Treasurer Comment Letter; Va. Treasury Comment Letter.

803 *See, e.g.*, Federated II, Comment Letter; Federated IV Comment Letter; TRACS Financial Comment Letter.

804 *See, e.g.*, Ga. Treasurer Comment Letter; Va. Treasury Comment Letter.

805 *See* Ga. Comment Letter; Comment Letter of West Virginia Board of Treasury Investments (Sept. 17, 2013) ("WV Bd. of Treas. Invs. Comment Letter").

We acknowledge, as noted by commenters, that there may be effects and costs imposed on LGIPs as a result of the reforms we are adopting today. We expect it is likely that GASB will reevaluate its accounting standards in light of the final amendments to rule 2a-7 that we are adopting today and take action as it determines appropriate.[806] We do not, however, have authority over the actions that GASB may or may not take, nor do we regulate LGIPs under rule 2a-7 or otherwise. In order for certain investors to continue to invest in LGIPs as they do today, state legislatures may determine that they need to amend state statutes and policies to permit investment in investment pools that adhere to rule 2a-7 as amended (unless GASB were to de-couple LGIP accounting standards from rule 2a-7). GASB and state legislatures may address these issues during the two-year compliance period for the fees and gates and floating NAV reforms.[807] As noted above, a few commenters suggested that state statutes and investment policies may need to be amended, but did not provide us with information regarding how various state legislatures and other market participants might react. Accordingly, we remain unable to predict how various state legislatures and other market participants will react to our reforms, nor do we have the information necessary to provide a reasonable estimate of the impact on LGIPs or the potential effects on efficiency, competition, and capital formation.[808]

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806 GASB has currently included as a potential project in 2014 an agenda item to identify potential alternative pool structures that could be suitable in the event that the Commission amends the way in which money market funds operate under rule 2a-7, including a move to a floating NAV. *See* Government Accounting Standards Board, Technical Plan for the First Third of 2014: Technical Projects (2a7-Like External Investment Pools), available at http://gasb.org/cs/ContentServer?c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176163713461.

807 *See infra* section III.N.

808 As noted above, we do not have authority over the actions of GASB and/or its decision to facilitate the operation of LGIPs as stable value investment vehicles through linkage to rule 2a-7 (including, as amended today).

5. *Unregistered Money Market Funds Operating Under Rule 12d1-1*

Several commenters expressed concern regarding amended rule 2a-7's effect on unregistered money market funds that choose to operate under certain provisions of rule 12d1-1 under the Investment Company Act.[809] Rule 12d1-1 permits investment companies ("acquiring investment companies") to acquire shares of registered money market funds in the same or in a different fund group in excess of the limitations set forth in section 12(d)(1) of the Investment Company Act.[810] In addition to providing an exemption from section 12(d)(1) of the Investment Company Act, rule 12d1-1 also provides exemptions from section 17(a) and rule 17d-1, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.[811] A fund's investments in unregistered money market funds is not restricted by section 12(d)(1).[812]

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809 Dechert Comment Letter; Comment Letter of Russell Investments (Sept. 17, 2013) ("Russell Comment Letter"); Oppenheimer Comment Letter; UBS Comment Letter. *See also* Wells Fargo Comment Letter (arguing that proposed amendments to Form PF should not apply to unregistered liquidity vehicles owned exclusively by registered funds and complying with rule 12d1-1 under the Investment Company Act). We address the Form PF requirements for unregistered money market funds below. *See infra* section III.H.

810 Under section 12(d)(1)(A), an investment company (and companies or funds it controls) is generally prohibited from acquiring more than three percent of another investment company's outstanding voting securities, investing more than five percent of its total assets in any given investment company, and investing more than 10 percent of its total assets in investment companies in the aggregate. *See also* section 12(d)(1)(B) (limiting the sale of registered open-end fund shares to other funds).

811 Section 17(a) generally prohibits affiliated persons of a registered fund ("first-tier affiliates") or affiliated persons of the fund's affiliated persons ("second-tier affiliates") from selling securities or other property to the fund (or any company the fund controls). Section 17(d) of the Investment Company Act makes it unlawful for first- and second-tier affiliates, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund, or a company it controls, is a joint or a joint and several participant in contravention of Commission rules. Rule 17d-1(a) prohibits first- and second-tier affiliates of a registered fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the fund (or any company it controls) is a participant unless an application regarding the enterprise, arrangement or plan has been filed with the Commission and has been granted.

812 Private funds are generally excluded from the definition of an "investment company" for purposes of the Investment Company Act. However, private funds that fall under section 3(c)(1) or 3(c)(7) are deemed to be an investment company for purposes of the limitations set forth in section 12(d)(1)(A)(i) and 12(d)(1)(B)(i) governing the purchase or other acquisition by such private fund of any security issued by any registered investment company and the sale of any securities issued by any registered investment

Nonetheless, these investments are subject to the affiliate transaction restrictions in section 17(a) and rule 17d-1 and therefore require exemptive relief from such restrictions.[813] Rule 12d1-1 thus permits a fund to invest in an unregistered money market fund without having to comply with the affiliate transaction restrictions in section 17(a) and rule 17d-1, provided that the unregistered money market fund satisfies certain conditions in rule 12d1-1.

Unregistered money market funds typically are organized by a fund adviser for the purpose of managing the cash of other investment companies in a fund complex and operate in almost all respects as a registered money market fund, except that their securities are privately offered and thus not registered under the Securities Act.[814] For purposes of investments in an unregistered money market fund, the rule 12d1-1 exemption from the affiliate transaction restrictions is available only for investments in an unregistered money market fund that operates like a money market fund registered under the Investment Company Act. To be eligible, an unregistered money market fund is required to (i) limit its investments to those in which a money market fund may invest under rule 2a-7, and (ii) undertake to comply with all other provisions of rule 2a-7.[815] Therefore, unless otherwise exempted, unregistered money market funds choosing

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company to any such private fund. Although a private fund is subject to the limitations set forth in section 12(d) with respect to its investment in a registered investment company, a registered investment company is not subject to the limitations set forth in section 12(d) with respect to its investment in any such private fund.

813 *See* Funds of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006) [71 FR 36640 (June 27, 2006)].

814 *Id.*

815 Rule 12d1-1(d)(2)(ii). In addition, the unregistered money market fund's adviser must be registered as an investment adviser with the Commission. *See* rule 12d1-1(b)(2)(ii). In order for a registered fund to invest in reliance on rule 12d1-1 in an unregistered money market fund that does not have a board of directors, the unregistered money market fund's investment adviser must perform the duties required of a money market fund's board of directors under rule 2a-7. *See* rule 12d1-1(d)(2)(ii)(B). Lastly, the investment company is also required to reasonably believe that the unregistered money market fund operates like a registered money market fund and that it complies with certain provisions of the Investment Company Act. *See* rule

to operate under rule 12d1-1 would need to comply with the amendments to rule 2a-7 we are adopting today.

Several commenters argued that unregistered money market funds that currently conform their operations to the requirements of rule 12d1-1 should not be required to comply with certain provisions of our amendments to rule 2a-7, particularly our floating NAV and liquidity fees and gates amendments,[816] and no commenters argued otherwise. Some of these commenters argued that the ability to invest in unregistered money market funds is a valuable tool for investment companies, because such unregistered money market funds are designed to accommodate the daily inflows and outflows of cash of the acquiring investment company, and can be operated at a lower cost than registered investment companies.[817] Some of these commenters also argued that requiring unregistered money market funds to adopt a floating NAV would reduce the attractiveness of unregistered money market funds and possibly eliminate the unregistered fund as a cash management tool for an acquiring investment company.[818]

Although we recognize the benefits of using unregistered money market funds for these purposes, we do not believe that these types of funds are immune from the risks posed by money market funds generally. Several commenters argued that unregistered money market funds relying on rule 12d1-1 do not present the type of risk that our amendments are designed to reduce.[819] These commenters also argued that, given that unregistered money market funds often

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12d1-1(b)(2)(i).

816 Dechert Comment Letter; Russell Comment Letter; Oppenheimer Comment Letter; UBS Comment Letter.

817 *See, e.g.,* Dechert Comment Letter; Russell Comment Letter; UBS Comment Letter.

818 *See, e.g.,* Dechert Comment Letter; Russell Comment Letter.

819 *Id.*

are created solely for investment by acquiring investment companies and typically have the same sponsor, there is little concern of unforeseeable large-scale redemptions or runs on these funds.[820]

We disagree, and we believe that if registered funds invest in unregistered money market funds in a different fund complex, these unregistered funds are equally susceptible to the concerns that our amendments are designed to address, including concerns about the risks of investors' incentives to redeem ahead of other investors in times of market stress and the resulting potential dilution of investor shares. For example, if multiple registered funds are investing in an unregistered money market fund in a different fund complex, a registered fund in one fund complex may have an incentive to redeem shares in times of market stress prior to the redemption of shares by funds in other fund complexes. This redemption could have a potentially negative impact on the remaining registered funds that are investing in the unregistered money market and could increase the risk of dilution of shares for the remaining registered funds.

We also believe that unregistered money market funds that are being used solely as investments by investment companies in the same fund complex remain susceptible to redemptions in times of fund and market stress. For example, if multiple registered funds are invested in an unregistered money market fund in the same fund complex, a portfolio manager of one registered fund may have an incentive to redeem shares in times of market stress, which could have a potentially negative impact on the other registered funds that may also be invested in the unregistered fund. After further consideration regarding the comparability of risk in these funds, we believe that it is appropriate that our floating NAV amendments apply to unregistered

820 *Id.*

money market funds that conform their operations to the requirements of rule 12d1-1.[821]

Some commenters also argued that our liquidity fees and gates amendments are ill-suited for unregistered money market funds.[822] Specifically, these commenters noted that under rule 12d1-1, the adviser typically performs the function of the unregistered fund's board for purposes of compliance with rule 2a-7.[823] Therefore, these commenters argued, if fees and gates are implemented, the adviser would be called upon to make decisions about liquidity fees and gates, which could present a potential conflict of interest in situations when an affiliated investment company advised by the same adviser would be the redeeming shareholder.[824]

We recognize that in many cases the adviser to an unregistered money market fund typically performs the function of the fund's board,[825] and that this may create conflicts of interest. We continue to believe that, as discussed above in section III.A.2.b and given the role of independent directors, a fund's board is in the best position to determine whether a fee or gate is in the best interests of the fund. However, when there is no board of directors, we believe that it is appropriate for the adviser to the fund to determine when and how a fund will impose liquidity fees and/or redemption gates. We have previously stated that, in order for a registered fund to invest in reliance on rule 12d1-1 in an unregistered money market fund that does not have a board of directors (because, for example, it is organized as a limited partnership), the unregistered money market fund's investment adviser must perform the duties required of a

821 We note that unregistered money market funds that otherwise meet the definition of a government money market fund as defined in rule 2a-7(c)(2)(iii) would not be subject to the floating NAV requirement. *See* rule 2a-7(a)(16).

822 *See* Dechert Comment Letter; Russell Comment Letter; UBS Comment Letter.

823 *Id.*

824 *Id.*

825 *See supra* note 815.

money market fund's board of directors under rule 2a-7.[826] In addition, we note that investment advisers are subject to a fiduciary duty, which requires them, when faced with conflicts of interest, to fully disclose to clients all material information, a duty that is intended "to eliminate, or at least expose, all conflicts of interest which might include an investment adviser – consciously or unconsciously – to render advice which was not disinterested."[827] While we cannot determine whether a conflict of interest exists in every case of an adviser advising both a registered fund and unregistered money market fund under rule 12d1-1, we note that the adviser is subject to the requirement to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder, as required by rule 206(4)-7 under the Advisers Act.[828]

6. *Master/Feeder Funds – Fees and Gates Requirements*

We are adopting, as suggested by a commenter, a provision specifying the treatment of feeder funds in a master/feeder fund structure under the fees and gates requirements.[829] This provision will not allow a feeder fund to independently impose a fee or gate in reliance on today's amendments.[830] However, under the amended rule, a feeder fund will be required to pass through to its investors a fee or gate imposed by the master fund in which it invests.[831] In

826 *See* Funds of Funds Release, *supra* note 813, at n.42. *See also supra* note 815.

827 SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).

828 *See* rule 206(4)-7 of the Advisers Act (making it unlawful for an investment adviser registered with the Commission to provide investment advice unless the adviser has adopted and implemented written policies and procedures reasonably designed to prevent violation of the Advisers Act by the adviser or any of its supervised persons).

829 *See* rule 2a-7(c)(2)(v) (defining "feeder fund" as any money market fund that owns, pursuant to section 12(d)(1)(E), shares of another money market fund).

830 *See id.*

831 *Id.*

response to our request for comment on whether particular funds or redemptions should not be subject to fees and gates, a commenter recommended that we permit a master fund and its board, but not a feeder fund and its board, to impose and set the terms of a fee or gate.[832] The feeder fund would then have to "institute" the fee or gate on its redemptions "at the times and in the amounts instituted by the master fund."[833] Another commenter suggested, however, that fund boards should be given discretion to impose fees and/or gates on either or both a master or feeder fund(s).[834]

We have considered the comments received and have been persuaded that a feeder fund in a master/feeder structure should only be permitted to pass through the fees and gates imposed by the master fund.[835] The master/feeder structure is unique in that the feeder fund serves as a conduit to the master fund – the master fund being the fund that actually invests in money market securities. As a commenter pointed out, "the master feeder structure comprises one pool of assets, managed by the master fund's investment adviser, under the oversight of the master fund's board of directors."[836] Because the feeder fund's investments consist of the master fund's securities, its liquidity is determined by the master fund's liquidity. Accordingly, because a feeder fund's liquidity is dictated by the liquidity of the master fund, we believe the master fund and its board are best suited, in consultation with the master fund's adviser, to determine whether

832 *See* Stradley Ronon Comment Letter.

833 *Id.*

834 *See* UBS Comment Letter.

835 For example, if a master fund's board determines that the master fund should impose a liquidity fee, a feeder fund must pass through that liquidity fee to its investors and we would expect it would subsequently remit such fee to the master fund.

836 *See* Stradley Ronon Comment Letter. We note that only the master fund has an investment adviser because a master fund's shares are the only investment securities that may be held by the feeder fund. *See* section 12(d)(1)(E).

liquidity is under stress and a fee or gate should be imposed. We note that we took a similar approach with respect to master/feeder funds in rule 22e-3.[837]

7. *Application of Fees and Gates to Other Types of Funds and Certain Redemptions*

We have determined that all money market funds, other than government money market funds and feeder funds in a master/feeder fund structure, should be subject to the fees and gates requirements. We received a number of comments suggesting types of funds that should not be subject to the fees and gates requirements.[838] In addition to the comments we received regarding the application of fees and gates to the types of funds discussed above, commenters also proposed other specific types of funds or entities that should not be subject to the fees and gates requirements, including, for example, money market funds with assets of less than $25 billion under management,[839] or securities lending cash collateral reinvestment pools.[840]

Because of the board flexibility and discretion included in the fees and gates amendments we are adopting today, as well as for the reasons discussed below,[841] we are requiring all funds, other than government money market funds and feeder funds in a master/feeder structure (for the reasons discussed above),[842] to comply with the fees and gates requirements. As noted above, the

837 *See* rule 22e-3(b).

838 *See, e.g., supra* sections III.C.2 and III.C.3 (discussing commenter support for excluding retail and municipal money market funds); *but see*, HSBC Comment Letter ("[W]e believe all MMFs should be required to have the power to apply a liquidity fee or gate so that the MMF provider can manage a low probability but high impact event."); U.S. Bancorp Comment Letter.

839 *See* PFM Asset Mgmt. Comment Letter.

840 *See* State Street Comment Letter.

841 *See also supra* sections III.C.2-III.C.5 for a discussion of reasons specific to certain types of funds.

842 *See supra* sections III.C.1 and III.C.6. As discussed above with respect to feeder funds, we believe feeder funds in a master/feeder structure are distinguishable from other funds in that their liquidity is dictated by the liquidity of the master fund. Thus, we believe the flexibility and discretion afforded to boards in today's amendments should be limited to a master fund's board. We note that although feeder funds may

fees and gates amendments do not require a fund to impose fees and gates if it is not in the fund's best interests. Thus, even if a particular type of fund is subject to the fees and gates provisions, it does not have to impose fees and gates. Rather, a fund's board may use fees and gates as tools to limit heavy redemptions and must act in the best interests of the fund in determining whether fees and gates should be imposed.

In addition, we note that the fees and gates amendments will not affect a money market fund's investors unless the fund's weekly liquid assets fall below 30% of its total assets – *i.e.*, the fund shows possible signs of heavy redemption pressure – and even then, it is up to the board to determine whether or not such measures are in the best interests of the fund. Allowing specific types of money market funds (other than government funds and feeder funds for the reasons discussed above) to not be subject to the fees and gates requirements could leave funds and their boards without adequate tools to protect shareholders in times of stress. Also, allowing funds not to comply with the fees and gates requirements would merely relieve a fund during normal market conditions of the costs and burdens created by the prospect that the fund could impose a fee or gate if someday it was subject to heavy redemptions.[843] In considering these risks, costs, and burdens, as well as the possibility of unprotected shareholders and broader contagion to the short-term funding markets, we believe it is appropriate to subject all money market funds (other than government funds and feeder funds for the reasons discussed above) to the fees and gates

not individually impose fees and gates in reliance on today's amendments, master funds are subject to today's amendments and their imposition of fees and gates will be passed through to feeder funds' investors.

843 We noted in the Proposing Release that retail money market funds experienced fewer redemptions than institutional money market funds during the financial crisis and thus may be less likely to suffer heavy redemptions in the future. Nonetheless, we cannot predict if this will be the case if there is a future financial crisis.

requirements.

In addition to the reasons discussed above, we describe more fully below our rationale for subjecting particular types of funds and redemptions to the fees and gates amendments.

a. Small Redemptions and Irrevocable Redemptions

Some commenters suggested that small redemptions should not be subject to fees and gates because they are less likely to materially impact the liquidity position of a fund.[844] As discussed in the Proposing Release, we also have considered whether irrevocable redemption requests (*i.e.* requests that cannot be rescinded) that are submitted at least a certain period in advance should not be subject to fees and gates as the fund should be able to plan for such liquidity demands and hold sufficient liquid assets.[845] We are concerned, however, that shareholders could try to "game" the fees and gates requirements if we took such an approach with respect to these redemptions, for example, by redeeming small amounts every day to fit under a redemption size limit or by redeeming a certain irrevocable amount every week and then reinvesting the redemption proceeds immediately if the cash is not needed.[846] We also remain concerned that allowing certain redemptions to not be subject to fees and gates could add cost and complexity to the fees and gates requirements both as an operational matter (*e.g.,* fund groups would need to be able to separately track which shares are subject to a fee or gate and which are not, and create the system and policies to do so) and in terms of ease of shareholder

844 *See, e.g.,* Fin. Info. Forum Comment Letter.

845 *See* Proposing Release, *supra* note 25, at 200-201.

846 *See supra* note 315 and accompanying text. Commenters suggested that concerns over gaming could be addressed by putting additional policies in place, such as placing limits on the number of redemptions in any given period. *See, e.g.,* Fin. Info. Forum Comment Letter. We believe that such a solution to gaming, much like an exception to the fees and gates requirements, would create additional cost and complexity to the amendments without substantial benefit.

understanding without providing substantial benefits.[847]

b. ERISA and Other Tax-Exempt Plans

Many commenters raised concerns regarding the application of fees and gates to funds offered in Employee Retirement Income Security Act ("ERISA") and/or other tax-exempt plans.[848] Some commenters expressed concern that fees and gates would create issues for these plans.[849] For example, commenters were worried about potential violations of certain minimum required distribution rules that could be impeded by the imposition of a gate,[850] potential taxation as a result of an inability to process certain mandatory refunds on a timely basis,[851] problems arising in plan conversions or rollovers in the event of a fee or gate,[852] possible conflicts with the Department of Labor's ("DOL") qualified default investment ("QDIA") rules,[853] and certain general fiduciary requirements on plan fiduciaries with respect to adequate liquidity in their plan.[854]

As an initial point, we note that money market funds are currently permitted to use a redemption gate and liquidate under rule 22e-3, and they still continue to be offered as

847 *See supra* note 315 and accompanying text.

848 *See, e.g.,* Schwab Comment Letter; Fin. Svcs. Inst. Comment Letter; Oppenheimer Comment Letter; TIAA-CREF Comment Letter.

849 *See, e.g.,* Fin. Svcs. Roundtable Comment Letter; Schwab Comment Letter; Comment Letter of American Benefits Council (Sept. 16, 2013) ("American Benefits Council Comment Letter").

850 *See, e.g.,* Schwab Comment Letter; American Benefits Council Comment Letter; SPARK Comment Letter.

851 *See, e.g., id.*

852 *See, e.g.,* American Benefits Council Comment Letter ("In some circumstances, retirement assets must be moved because of mandatory rollover requirements or because a plan has been abandoned. Certain safe harbor regulations and prohibited transaction class exemptions effectively require that funds be placed in an investment that seeks to maintain the dollar value that is equal to the amount invested, generally is liquid and does not impose 'substantial restrictions' on redemptions.") (citations omitted); Schwab Comment Letter.

853 *See, e.g.,* Schwab Comment Letter; American Benefits Council Comment Letter.

854 *See, e.g.,* American Bankers Ass'n Comment Letter; American Benefits Council Comment Letter.

investment options under tax-qualified plans. However, in light of the commenters' concerns, we have consulted the DOL's Employee Benefits Security Administration ("EBSA") regarding potential issues under ERISA. With respect to general fiduciary requirements on plan fiduciaries obligating them to prudently manage the anticipated liquidity needs of their plan, EBSA staff advised our staff that a money market fund's liquidity and its potential for redemption restrictions is just one of many factors a plan fiduciary would consider in evaluating the role that a money market fund would play in assuring adequate liquidity in a plan's investment portfolio.

Additionally, we believe that certain other potential concerns presented by commenters, such as concerns regarding QDIAs and the imposition of a fee or gate within 90 days of a participant's first investment, are unlikely to materialize. We understand that the imposition of a liquidity fee or gate would have to relate to a liquidation or transfer request within this 90-day period in order to create an issue with QDIA fiduciary relief. Even if this occurred with respect to a specific participant, steps may be taken to avoid concerns with the QDIA. We understand, for instance, that a liquidity fee otherwise assessed to the account of a plan participant or beneficiary could be paid by the plan sponsor or a service provider, and not by the participant, beneficiary or plan.[855] In addition, a plan sponsor or other party in interest could loan funds to the plan for the payment of ordinary operating expenses of the plan or for a purpose incidental to the ordinary operation of the plan to avoid the effects of a gate.[856] We understand that if necessary, other steps may also exist.

855 *See* Department of Labor, Employee Benefits Security Administration Field Assistance Bulletin 2008-03, Q11 (Apr. 29, 2008).

856 *See* Prohibited Transaction Exemption 80-26, [45 FR 28545 (Apr. 29, 1980)], as amended at, [65 FR 17540 (Apr. 3, 2000)], [67 FR 9485 (Mar. 1, 2002)] and [71 FR 17917 (Apr. 7, 2006)].

DOL staff has also advised the SEC that the "substantial restrictions" requirement, contained in Prohibited Transaction Exemptions 2004-16[857] and 2006-06[858], does not apply to money market funds.[859] DOL staff further indicated to us, however, that a liquidity fee could raise issues under the conditions of these prohibited transaction exemptions that require that the IRA owner be able to transfer funds to another investment or another IRA "within a reasonable period of time after his or her request and without penalty to the principal amount of the investment."[860] We understand that while a gate of no longer than 10 business days would not amount to an unreasonable period of time under the conditions, DOL staff has advised us that, in order for a fiduciary to continue to rely on the exemptions for the prohibited transactions arising from the initial decision to roll over amounts to a money market fund that is sponsored by or affiliated with the fiduciary, additional steps would need to be taken to protect the principal amount rolled over in the event that a liquidity fee is imposed. We understand that examples of such additional steps would include a contractual commitment by the fiduciary or its affiliate to pay any liquidity fee otherwise assessed to the IRA, to the extent such fee would be deducted from the principal amount rolled over. Additionally, to the extent plan fiduciaries do not wish to take such steps, they can instead select government money market funds, which are not subject to the fees and gates amendments, or other funds that do not create prohibited transactions issues.

Staff at EBSA have communicated that they will work with staff at the SEC to provide additional guidance as needed.

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857 [69 FR 57964 (Sept. 28, 2004)].

858 [71 FR 20856 (Apr. 21, 2006)], as amended, [73 FR 58629 (Oct. 7, 2008)].

859 *See* section IV(e) of PTE 2004-16 and section V(c) of PTE 2006-06.

860 *See* section II(i) of PTE 2004-16 and section III(h) of PTE 2006-06.

With respect to the minimum distribution requirement and the ability to process certain mandatory distributions or refunds on a timely basis, we understand that although gates can hypothetically prevent required distributions or refunds, in practice it will be unlikely to occur as participants are unlikely to have their entire account invested in prime money market funds or, more precisely, one or more prime money market funds that determine to impose a gate at the same time.[861] In addition, to the extent a gate does prevent a timely minimum distribution or refund, we understand that there are potential steps an individual or plan/IRA can take to avoid the negative consequences that may result from failure to meet the minimum distribution or refund requirements. For example, with respect to the minimum distribution requirement, an individual who fails to meet this requirement as a result of a gate is entitled to request a waiver with respect to potential excise taxes by filing a form with the IRS that explains the rationale for the waiver.[862] In addition, with respect to plan qualification issues that may arise in the event a plan does not make timely minimum required distributions or refunds as a result of a gate, we understand that a plan sponsor may obtain relief pursuant to the Employee Plans Compliance Resolution System ("EPCRS").[863]

c. Insurance Funds

A few commenters requested special treatment for money market funds underlying

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[861] In addition, with respect to the minimum distribution requirement, we note that participants could be encouraged to take required distributions before the deadline to avoid the possibility that a gate could prevent them from meeting the requirements.

[862] *See* section 4974(d) of the Tax Code. We understand that to request a waiver, a taxpayer would file Form 5329 with the IRS. Whether to grant a waiver request is within the IRS's discretion.

[863] *See* Rev. Proc. 2013-12. We understand that, pursuant to the EPCRS, if a minimum required distribution or refund timing failure is insignificant or is corrected within a limited time period, and certain other requirements are satisfied, then the failure can be voluntarily corrected without filing with the IRS. Otherwise, we understand that a filing is required to correct qualification failures.

variable annuity contracts or other insurance products, citing contractual and state law restrictions affecting insurance and annuity products that would conflict with the ability of a money market fund's board to impose a fee or gate.[864] Some commenters further noted that money market funds underlying variable contract separate accounts are not prone to runs.[865] Another commenter noted that most insurance products have "free-look" provisions, allowing an owner to return his/her contract for full value if he/she is not satisfied with its terms.[866] During such initial periods, insurance companies typically keep client funds in money market funds, which might be incompatible with fees and gates.[867]

We have determined not to provide special treatment for money market funds underlying variable annuity contracts or other insurance products for the fees and gates requirements. We recognize money market funds underlying variable annuity contracts or other insurance products may be indirectly subject to certain restrictions or requirements that do not apply to other money market funds. We note, however, that these same funds currently are permitted to suspend redemptions pursuant to rule 22e-3 and their ability to do so has not prevented them from being offered in connection with variable annuity and other insurance products. In addition, to the extent today's fees and gates amendments are incompatible with contractual or state law, or with free look provisions, we note that an insurance company can instead offer a government money

864 *See, .e.g.,* Dechert Comment Letter; Comment Letter of American Council of Life Insurers (Sept. 17, 2013) ("ACLI Comment Letter"); TIAA-CREF Comment Letter.

865 *See* ACLI Comment Letter; Comment Letter of Committee of Annuity Insurers (Sept. 17, 2013) ("CAI Comment Letter").

866 *See* Comment Letter of John Sklar (July 9, 2013) ("Sklar Comment Letter").

867 *See id.*

market fund as an investment option under its contract(s).[868] Moreover, fees and gates will not affect the everyday activities of money market funds. They are instead designed to be used during times of potential stress.[869] If the market or a money market fund is experiencing stress, an insurance company could choose not to place contract holders' investments into a money market fund during free look periods, subject to contractual provisions and prospectus disclosures.

D. Guidance on the Amortized Cost Method of Valuation and Other Valuation Concerns

After further consideration, and as suggested by a number of commenters, our final rules will permit stable NAV money market funds (*i.e.*, government and retail money market funds) to maintain a stable NAV by using amortized cost valuation and/or the penny rounding method of pricing.[870] In addition, all other registered investment companies and business development companies (including floating NAV money market funds under our amendments) may, in accordance with Commission guidance, continue to use amortized cost to value debt securities with remaining maturities of 60 days or less if fund directors, in good faith, determine that the fair value of the debt securities is their amortized cost value, unless the particular circumstances warrant otherwise.[871] Accordingly, even for floating NAV money market funds, amortized cost

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868 To the extent an insurance company determines to offer a government money market fund as a new investment option under a contract, we recognize that there may be costs associated with this process, including costs associated with disclosing a new investment option to contract-holders, negotiating arrangements with new government money market funds, and filing with the Commission a substitution application under section 26(c).

869 We note that if, as suggested by commenters, money market funds underlying variable annuity or other insurance contracts are less prone to runs, then under the terms of our final rule amendments, such funds may be less likely to reach the liquidity thresholds that would trigger board consideration of fees or gates and, thus, may be less likely to be affected by today's amendments. *See supra* text accompanying note 865.

870 *See supra* section III.B.5.

871 *See* ASR 219, Financial Reporting Codification (CCH) section 404.05.a and .b (May 31, 1977), *supra* note 5. In this regard, the Commission has stated that the "fair value of securities with remaining maturities of

will continue to be an important part of the valuation of money market fund portfolio securities.[872]

We believe the expanded valuation guidance, discussed below, will help advance the goals of our money market fund reform rulemaking, because, among other things, stronger valuation practices may lessen a money market fund's susceptibility to heavy redemptions by decreasing the likelihood of sudden portfolio write-downs that may encourage financially sophisticated investors to redeem early. We provide below expanded guidance on the use of amortized cost valuation as well as other related valuation issues.[873]

1. Use of Amortized Cost Valuation

We consider it important, for a number of reasons, that funds and their investment

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60 days or less may not always be accurately reflected through the use of amortized cost valuation, due to an impairment of the creditworthiness of an issuer, or other factors. In such situations, it would appear to be incumbent on the directors of a fund to recognize such factors and take them into account in determining 'fair value.'"

872 For a mutual fund not regulated under rule 2a-7, the Investment Company Act and applicable rules generally require that it price its shares at the current NAV by valuing portfolio securities for which market quotations are readily available at market value, or if market quotations are not readily available, at fair value as determined in good faith by the fund's board of directors. *See* section 2(a)(41)(B) and rules 2a-4 and 22c-1. Notwithstanding these provisions, rule 2a-7 currently permits money market funds to use the amortized cost method of valuation and/or the penny rounding method of pricing. *See* current rule 2a-7(c).

873 Although discussed here primarily in the context of money market funds, except as noted below, this guidance is applicable to all registered investment companies and business development companies. For ease of reference, throughout this section we refer to all of these entities as "funds." We note that stable NAV money market funds that qualify as retail or government money market funds may use the amortized cost method of valuation to compute the current share price provided, among other things, the board of directors believes that the amortized cost method of valuation fairly reflects the market-based NAV and does not believe that such valuation may result in material dilution or other unfair results to investors or existing shareholders. *See generally* rule 2a-7(c)(1)(i) and rule 2a-7(g)(1)(i)(A)-(C). We also note that stable NAV money market funds that qualify as retail or government money market funds may not rely on this guidance to use amortized cost valuation in shadow pricing because rule 2a-7 specifically requires shadow prices to reflect "the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions)," and we would not consider amortized cost valuation to be an appropriate substitute that reflects current market conditions. *See also* 1983 Adopting Release, *supra* note 3, at n.44 and accompanying text ("In determining the market-based value of the portfolio for purposes of computing the amount of deviation, all portfolio instruments, regardless of the time to maturity, should be valued based upon market factors and not their amortized cost value.").

advisers and boards of directors have clear guidance regarding amortized cost valuation. Typically, money market funds hold a significant portion of portfolio securities with remaining maturities of 60 days or less,[874] and therefore, a floating NAV money market fund may use the amortized cost method to value these portfolio securities if the fund's board determines that the amortized cost value of the security is fair value. In addition, managers of floating NAV money market funds may have an incentive to use amortized cost valuation whenever possible in order to help stabilize the funds' NAV per share.

As noted above, under existing Commission guidance, funds would not be able to use amortized cost valuation to value certain debt securities when circumstances dictate that the amortized cost value of the security is not fair value.[875] The Commission's guidance in the Proposing Release construed the statute to effectively limit the use of amortized cost valuation to circumstances where it is the same as valuation using market-based factors.[876] Some commenters objected to this interpretation and suggested that the Commission more generally clarify this guidance.[877]

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874 For example, we estimate that approximately 56% of prime money market funds' portfolio securities had remaining maturities of 60 days or less (not including interest-rate resets) as of February 28, 2014. This estimate is based on Form N-MFP data.

875 *See* ASR 219, Financial Reporting Codification (CCH) section 404.05.a and .b (May 31, 1977), *supra* note 5 ("Although debt securities with remaining maturities in excess of 60 days should not be valued at amortized cost, the Commission will not object if the board of directors of a money market fund, in good faith, determines that the fair value of debt securities originally purchased with remaining maturities of 60 days or less shall be their amortized cost value, unless the particular circumstances dictate otherwise. Nor will the Commission object if, under similar circumstances, the fair value of debt securities originally purchased with maturities of in excess of 60 days, but which currently have maturities of 60 days or less, is determined by using amortized cost valuation for the 60 days prior to maturity, such amortization being based upon the market or fair value of the securities on the 61st day prior to maturity" (footnotes omitted)).

876 *See* Proposing Release, *supra* note 25, n.136.

877 *See, e.g.*, Invesco Comment Letter ("one of the footnotes to the Proposed Rule…refers to amortized cost pricing being available when it is the same as valuation based on market factors, implying that MMF could be barred from using amortized cost pricing if it differs even minutely from the market value of the

We recognize that existing valuation guidance may not be clear on how frequently funds should compare a debt security's amortized cost value to its fair value determined using market-based factors and what extent of deviation between the two values is permissible. We generally believe that a fund may only use the amortized cost method to value a portfolio security with a remaining maturity of 60 days or less when it can reasonably conclude, at *each time* it makes a valuation determination,[878] that the amortized cost value of the portfolio security is *approximately the same* as the fair value of the security as determined without the use of amortized cost valuation. Existing credit, liquidity, or interest rate conditions in the relevant markets and issuer specific circumstances at each such time should be taken into account in making such an evaluation.

Accordingly, it would not be appropriate for a fund to use amortized cost to value a debt security with a remaining maturity of 60 days or less and thereafter not continue to review whether amortized cost continues to be approximately fair value until, for example, there is a significant change in interest rates or credit deterioration. We generally believe that a fund should, at each time it makes a valuation determination, evaluate the use of amortized cost for portfolio securities, not only quarterly or each time the fund produces financial statements. We note that, under the final rules, each money market fund will be required to value, on a daily

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securities. While we believe this implication to have been unintentional, we nevertheless request the Commission to reaffirm clearly that MMFs, as all other mutual funds, can continue to use amortized cost pricing for securities with maturities of 60 days and less." (internal citations omitted)); ICI Comment Letter (also referring to this footnote and stating "It is unclear whether this means that amortized cost must at all times be identical to market-based price, or whether it is just another way of saying funds must use market-based pricing and not amortized cost. We urge the SEC to clarify that ASR 219 and its interpretations remain unchanged.").

878 As discussed below, we believe that, in some circumstances (*e.g.*, intraday), a fund may rely on the last obtained market-based data to assist it when valuing its portfolio securities using amortized cost.

basis, the fund's portfolio securities using market-based factors and disclose the fund's share price (or shadow price) rounded to four decimal places on the fund's website. As a result, we believe that each money market fund should have readily available market-based data to assist it in monitoring any potential deviation between a security's amortized cost and fair value determined using market-based factors. We believe that, in certain circumstances, such as intraday, a fund may rely on the last obtained market-based data to assist it when valuing its portfolio securities using amortized cost. To address this, a fund's policies and procedures could be designed to ensure that the fund's adviser is actively monitoring both market and issuer-specific developments that may indicate that the market-based fair value of a portfolio security has changed during the day, and therefore indicate that the use of amortized cost valuation for that security may no longer be appropriate.

2. *Other Valuation Matters*

Rule 2a-4 under the Investment Company Act provides that "[p]ortfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company." As we discussed in the Proposing Release, the vast majority of money market fund portfolio securities do not have readily available market quotations because most portfolio securities such as commercial paper, repos, and certificates of deposit are not actively traded in the secondary markets.[879] Accordingly, most money market fund portfolio securities are valued largely based upon "mark-to-model" or "matrix pricing"

879 *See* Proposing Release, *supra* note 25, at section II.B.1.

estimates.[880] In matrix pricing, portfolio asset values are derived from a range of different inputs, with varying weights attached to each input, such as pricing of new issues, yield curve information, spread information, and yields or prices of securities of comparable quality, coupon, maturity, and type.[881] Money market funds also may consider evaluated prices from third-party pricing services, which may take into account these inputs as well as prices quoted from dealers that make markets in these instruments and financial models.[882]

We received a number of comments regarding the utility of market-based valuation for money market securities and other securities that do not frequently trade in secondary markets. We also received comments discussing certain other valuation matters more generally, such as the use of pricing services in valuing such securities. Together, these comments indicated to us the need for further guidance in this area, which we provide below.

a. Fair Value for Thinly Traded Securities

First, some commenters suggested that market-based valuations of money market fund portfolio securities are not particularly meaningful, given the infrequent trading in money market fund portfolio securities and the use of matrix or model-based pricing or evaluated prices from

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880 *See, e.g.*, Harvard Business School FSOC Comment Letter ("secondary markets for commercial paper and other private money market assets such as CDs are highly illiquid. Therefore, the asset prices used to calculate the floating NAV would largely be accounting or model-based estimates, rather than prices based on secondary market transactions with sizable volumes."); Institutional Money Market Funds Association, *The Use of Amortised Cost Accounting by Money Market Funds*, *available at* http://www.immfa.org/assets/files/IMMFA%20The%20use%20of%20amortised%20cost%20accounting%20by%20MMF.pdf (noting that investors typically hold money market instruments to maturity and therefore there are relatively few prices from the secondary market or broker quotes).

881 *See, e.g.*, Federated VI Comment Letter; Hai Jin, et al., *Liquidity Risk and Expected Corporate Bond Returns*, 99 J. OF FIN. ECON. 628, at n.4 (2011) ("Matrix prices are set according to some algorithm based on prices of bonds with similar characteristics").

882 *See, e.g.*, Federated VI Comment Letter; Angel Comment Letter.

third-party pricing services.[883] One commenter stated that "it does not follow that the normal arguments for using actual market prices for calculating mutual fund NAVs apply to using noisy guesstimates of true value of non-traded assets."[884] Another commenter stated that, with regard to matrix-priced money market fund portfolio securities, "[m]arket-based valuations are not more accurate valuations than amortized cost."[885]

We acknowledge that matrix pricing and similar pricing methods involve estimates and judgments—and thus may introduce some "noise" into portfolio security prices, and therefore into the fund's NAV per share when rounded to one basis point. However, we do not agree that market-based prices of portfolio securities do not provide meaningful information or that amortized cost generally provides better or more accurate values of securities that do not frequently trade or that may or may not be held to maturity given the fund's statutory obligation to investors to satisfy redemptions within seven days (and a fund's disclosure commitment to generally satisfy redemptions much sooner).[886] Indeed, many debt securities held by other types of funds do not frequently trade, but our long-standing guidance on the use of amortized cost valuation is limited to debt securities with remaining maturities of 60 days or less and even then

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883 *See, e.g.*, Federated IV Comment Letter; Legg Mason & Western Asset Comment Letter; Chamber II Comment Letter.

884 *See* Angel Comment Letter.

885 *See* Federated VI Comment Letter ("Pricing experts have confirmed to us that only a small percentage of money market instruments actually trade daily in secondary markets. While the amortized cost method of valuing MMF portfolios is a simple and accurate means of valuing these types of high-quality, short-term instruments that generally are held to maturity, the effort to arrive at market-based valuations for these types of instruments is time-consuming, complicated and less exact.").

886 Many money market funds promise in fund disclosures to satisfy redemption requests on the same day as the request, except in extraordinary conditions. In addition, funds that are sold through broker-dealers seek to satisfy redemption requests within three business days because broker-dealers are subject to Securities Exchange Act rule 15c6-1, which establishes three business days as the standard settlement period for securities trades effected by a broker or a dealer.

only if the amortized cost value of these securities is fair value.[887] This guidance was based on our concern that "the use of the amortized cost method i[n] valuing portfolio securities of registered investment companies may result in overvaluation or undervaluation of the portfolios of such companies, relative to the value of the portfolios determined with reference to current market-based factors."[888] Such guidance is based on a preference embodied in the Investment Company Act that funds value portfolio securities taking into account current market information.[889]

Because most money market fund portfolio securities are not frequently traded and thus are not securities for which market quotations are readily available, we understand that they are typically fair valued in good faith by the fund's board.[890] As a general principle, the fair value of a security is the amount that a fund might reasonably expect to receive for the security upon its current sale.[891] Determining fair value requires taking into account market conditions existing at

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887 *See* ASR 219, Financial Reporting Codification (CCH) section 404.05.a and .b (May 31, 1977), *supra* note 5. We have said that it is inconsistent with rule 2a-4 to use the amortized cost method of valuation to determine the fair value of debt securities that mature at a date more than 60 days after the valuation date.

888 *Id.*

889 Section 22(c) and rules 2a-4 and 22c-1(a).

890 As discussed further below, although a fund's directors cannot delegate their statutory duty to determine the fair value of fund portfolio securities, the board may appoint others, such as the fund's investment adviser or a valuation committee, to assist them in determining fair value. *See infra* note 898 and accompanying text.

891 *See* Securities and Exchange Commission Codification of Financial Reporting Policies, Statement Regarding "Restricted Securities," Investment Company Act Release No. 5847 (Oct. 21, 1969) [35 FR 19989 (Dec. 31, 1970)] ("ASR 113"); Investment Companies, Investment Company Act Release No. 6295 (Dec. 23, 1970) [35 FR 19986 (Dec. 31, 1970)], Financial Reporting Codification (CCH) section 404.03 (Apr. 15, 1982) ("ASR 118"). We generally believe that the current sale standard appropriately reflects the fair value of securities and other assets for which market quotations are not readily available within the meaning of section 2(a)(41)(B). The price that an unrelated willing buyer would pay for a security or other asset under current market conditions is indicative of the value of the security or asset. *See also* FASB ASC paragraph 820-10-35-3 and FASB ASC paragraph 820-10-20 ("A fair value measurement assumes that the asset or liability is exchanged in an orderly transaction between market participants to sell the asset or transfer the liability at the measurement date under current market conditions."; Fair Value means "the

that time. Accordingly, funds holding debt securities generally should not fair value these securities at par or amortized cost based on the expectation that the funds will hold those securities until maturity, if the funds could not reasonably expect to receive approximately that value upon the current sale of those securities under current market conditions.[892] We recognize that valuing thinly traded debt securities can be more complicated and time-consuming than valuing liquid equity securities based on readily available market quotations or than valuing debt securities using the amortized cost method. However, given the redeemable nature of mutual fund shares and the mandates of the Investment Company Act to sell and redeem fund shares at prices based on the current net asset values of those shares, we believe it is important for funds to take steps to ensure that they are properly valuing fund shares and treating all shareholders fairly.

b. Use of Pricing Services

As noted above, many funds, including many money market funds, use evaluated prices provided by third-party pricing services to assist them in determining the fair values of their portfolio securities. Some commenters have raised concerns that money market funds will place undue reliance on a small market of third-party pricing vendors, even though they acknowledge that they provide only "good faith" opinions on valuation.[893] A few commenters argued that

price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date").

892 As we have previously stated: "Fair value cannot be based on what a buyer might pay at some later time, such as when the market ultimately recognizes the security's true value as currently perceived by the portfolio manager. Funds also may not fair value portfolio securities at prices not achievable on a current basis on the belief that the fund would not currently need to sell those securities." *See, e.g.*, In the Matter of Jon D. Hammes, *et al.*, Investment Company Act Release No. 26290 (Dec. 11, 2003) at n.5 (settlement). *See also* FASB ASC 820, at paragraph 820-10-35-54H ("A reporting entity's intention to hold the asset or to settle or otherwise fulfill the liability is not relevant when measuring fair value because fair value is a market-based measurement, not an entity-specific measurement.").

893 *See, e.g.*, Federated VI Comment Letter; SIFMA Comment Letter; Angel Comment Letter.

eliminating amortized cost valuation for money market funds and requiring market-based pricing could provide third-party pricing services with a much greater degree of influence on fund's portfolio valuation, which could increase operational complexity and risks.[894]

We recognize that pricing services employ a wide variety of pricing methodologies in arriving at the evaluated prices they provide, and the quality of those prices may vary widely. We note that the evaluated prices provided by pricing services are not, by themselves, "readily available" market quotations or fair values "as determined in good faith by the board of directors" as required under the Investment Company Act.[895] To the extent that certain money market funds are no longer permitted to use the amortized cost method to value all of their portfolio securities and all money market funds will be required to perform daily market-based valuations, funds may decide to rely more heavily on third parties, such as pricing services, to provide market-based valuation data. Accordingly, we believe it is important to provide guidance to funds and their boards regarding reliance on pricing services.

We note that a fund's board of directors has a non-delegable responsibility to determine whether an evaluated price provided by a pricing service, or some other price, constitutes a fair value for a fund's portfolio security.[896] In addition, we have stated that "it is incumbent upon the [fund's] Board of Directors to satisfy themselves that all appropriate factors relevant to the value

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894 *See, e.g.*, Federated VI Comment Letter; Chamber II Comment Letter.

895 *See* section 2(a)(41)(B) and rule 2a-4.

896 *See* ASR 118, *supra* note 891 ("[i]t is incumbent upon the Board of Directors to satisfy themselves that all appropriate factors relevant to the fair value of securities for which market quotations are not readily available have been considered and to determine the method of arriving at the fair value of each such security." A fund's directors cannot delegate this responsibility to anyone else). *See, e.g.*, In the Matter of Seaboard Associates, Inc. (Report of Investigation Pursuant to Section 21(a) of the Exchange Act), Investment Company Act Release No. 13890 (Apr. 16, 1984) ("The Commission wishes to emphasize that the directors of a registered investment company may not delegate to others the ultimate responsibility of determining the fair value of any asset not having a readily ascertainable market value . . . .").

of securities for which market quotations are not readily available have been considered," and that fund directors "must . . . continuously review the appropriateness of the method used in valuing each issue of security in the [fund's] portfolio."[897] Although a fund's directors cannot delegate their statutory duty to determine the fair value of fund portfolio securities for which market quotations are not readily available, the board may appoint others, such as the fund's investment adviser or a valuation committee, to assist them in determining fair value, and to make the actual calculations pursuant to the fair valuation methodologies previously approved by the directors.[898]

Before deciding to use evaluated prices from a pricing service to assist it in determining the fair values of a fund's portfolio securities, the fund's board of directors may want to consider the inputs, methods, models, and assumptions used by the pricing service to determine its evaluated prices, and how those inputs, methods, models, and assumptions are affected (if at all) as market conditions change. In choosing a particular pricing service, a fund's board may want to assess, among other things, the quality of the evaluated prices provided by the service and the extent to which the service determines its evaluated prices as close as possible to the time as of which the fund calculates its net asset value. In addition, the fund's board should generally consider the appropriateness of using evaluated prices provided by pricing services as the fair values of the fund's portfolio securities where, for example, the fund's board of directors does not have a good faith basis for believing that the pricing service's pricing methodologies produce evaluated prices that reflect what the fund could reasonably expect to obtain for the securities in

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897 *See* ASR 118, *supra* note 891.

898 *See id.*

a current sale under current market conditions.[899]

E. Amendments to Disclosure Requirements

We are amending a number of disclosure requirements related to the liquidity fees and gates and floating NAV requirements adopted today, as well as other disclosure enhancements discussed in the proposal. These disclosure amendments improve transparency related to money market funds' operations, as well as their overall risk profile and any use of affiliate financial support. In the sections that follow, we first discuss amendments to rule and form provisions applicable to various disclosure documents, including disclosures in money market funds' advertisements, the summary section of the prospectus, and the statement of additional information ("SAI").[900] Next, we discuss amendments to the disclosure requirements applicable to money market fund websites, including information about money market funds' liquidity levels, shareholder flows, market-based NAV per share (rounded to four decimal places), imposition of liquidity fees and gates, and any use of affiliate sponsor support.

1. Required Disclosure Statement

a. Overview of Disclosure Statement Requirements

As discussed in the Proposing Release, and as modified to reflect commenters' concerns,

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899 *See* ASR 113 and ASR 118, *supra* note 891; *see also* 1983 Adopting Release *supra* note 3 ("If the [money market] fund uses an outside service to provide this type of pricing for its portfolio instruments, it may not delegate to the provider of the service the ultimate responsibility to check the accuracy of the system.").

900 In keeping with the enhanced disclosure framework we adopted in 2009, the amendments are intended to provide a layered approach to disclosure in which key information about the new features of money market funds would be provided in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used) with more detailed information provided elsewhere in the statutory prospectus and in the SAI. *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] ("Summary Prospectus Adopting Release") at paragraph preceding section III (adopting rules permitting the use of a summary prospectus, which is designed to provide key information that is important to an informed investment decision).

we are adopting amendments to rule 482 under the Securities Act and Item 4 of Form N-1A to revise the disclosure statement requirements concerning the risks of investing in a money market fund in its advertisements or other sales materials that it disseminates (including on the fund website) and in the summary section of its prospectus (and, accordingly, in any summary prospectus, if used).

Money market funds are currently required to include a specific statement concerning the risks of investing in their advertisements or other sales materials and in the summary section of the fund's prospectus (and, accordingly, in any summary prospectus, if used).[901] In the Proposing Release, we proposed to modify the format and content of this required disclosure. Specifically, we proposed to require money market funds to present certain disclosure statements in a bulleted format. The content of the proposed disclosure statements would have differed under each of the proposed reform alternatives. Under each reform alternative, the proposed statement would have included identical wording changes designed to clarify, and inform investors about, the primary risks of investing in money market funds generally, including new disclosure emphasizing that money market fund sponsors are not obligated to provide financial support. Additionally, the proposed statement under the fees and gates alternative would have included disclosure that would call attention to the risks of investing in a money market fund that could impose liquidity fees or gates, and the proposed statement under the floating NAV alternative would have included disclosure to emphasize the particular risks of investing in a floating NAV money market fund.

901 Rule 482(b)(4); Item 4(b)(1)(ii) of Form N-1A. Money market funds are currently required to include the following statement: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

Comments regarding the amended disclosure statement were mixed. Two commenters generally supported the proposed amendments to the disclosure statement under both alternatives, and one commenter expressed general support for the proposed disclosure under the fees and gates alternative.[902] Two commenters generally opposed the proposed disclosure statement, arguing that it would overstate the risks relative to other mutual funds and overwhelm investors with standardized mandated legends, which investors might ignore as "boilerplate."[903] Some commenters expressed concerns with particular aspects of the proposed disclosure, such as the required disclosure regarding sponsor support.[904] These comments are discussed in more detail below.

Today we are adopting amendments to the requirements for disclosure statements that must appear in money market funds' advertisements or other sales materials, and in the summary section of money market funds' statutory prospectus. As discussed in more detail below, these amendments are being adopted largely as proposed, but with some modifications to the proposed format and content. These modifications respond to comments we received and also reflect that we are adopting a liquidity fees and gates requirement for all non-government money market funds, including municipal money market funds, as well as a floating NAV requirement for institutional prime funds. As we stated in the Proposing Release, we are modifying the current

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902 *See* CFA Institute Comment Letter (noting that the proposed disclosures would put investors on notice that money market funds are not riskless and would provide the information in a clear and succinct manner); HSBC Comment Letter (generally supporting both statements but suggesting additions to cross-reference the prospectus's risk warnings and to make clear fees and gates would be used to protect investors); Federated II Comment Letter; Comment Letter of Federated Investors (Disclosure Requirements for Money Market Funds and Current Requirements of Rule 2a-7) (Sept. 17, 2013) ("Federated VIII Comment Letter") (concurring with the risk disclosure under the fees and gates alternative).

903 *See* ABA Business Law Section Comment Letter; NYC Bar Committee Comment Letter.

904 *See, e.g.,* Dreyfus Comment Letter; NYC Bar Committee Comment Letter.

disclosure requirements because we believe that enhancing the disclosure required to be included in fund advertisements and other sales materials, and in the summary section of the prospectus, will help change the investment expectations of money market fund investors, including any erroneous expectation that a money market fund is a riskless investment.[905] In addition, without such modifications, we believe that investors may not be fully aware of potential restrictions on fund redemptions or, for floating NAV funds, the fact that the value of their money market fund shares will, as a result of these reforms, increase and decrease as a result of the changes in the value of the underlying securities.[906]

Specifically, we are requiring money market funds that maintain a stable NAV to include the following disclosure statement in their advertisements or other sales materials and in the summary section of the statutory prospectus:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon the sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors.[907] An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[908]

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905 *See* Proposing Release, *supra* note 25, at sections III.A.8 and III.B.8.

906 *Id.*

907 Government funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii) may omit the following sentence: "The Fund may impose a fee upon the sale of your shares or may temporarily suspend your ability to sell shares if the fund's liquidity falls below required minimums because of market conditions or other factors." *See* rule 482(b)(4)(iii); Form N-1A Item 4(b)(1)(ii)(C).

908 *See* Rule 482(b)(4)(ii); Form N-1A Item 4(b)(1)(ii)(B). Besides the amendments to the disclosure

Funds with a floating NAV will also be required to include a similar disclosure statement in their advertisements or other sales materials and in the summary section of the statutory prospectus, modified to account for the characteristics of a floating NAV, as follows:

> You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon the sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[909]

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statement requirements set forth in Rule 482(b)(4)(ii) and Form N-1A Item 4(b)(1)(ii)(B), we also are adopting non-substantive changes to the text of these rule and form provisions. If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has contractually committed to provide financial support to the fund, the fund would be permitted to omit the last sentence from the disclosure statement in advertisements and sales materials for the term of the agreement. *See* Note to paragraph (b)(4), rule 482(b)(4). Likewise, if an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has contractually committed to provide financial support to the fund, and the term of the agreement will extend for at least one year following the effective date of the fund's registration statement, the fund would be permitted to omit the last sentence from the disclosure statement that appears in the fund's registration statement. *See* Instruction to Item 4(b)(1)(ii) of Form N-1A.

The proposal likewise would have permitted a similar omission from the proposed disclosure statement. *See* Proposing Release, *supra* note 25, at nn.429 and 431. As proposed, such omission would have been permitted if "an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund." We have modified the language of the Note to paragraph (b)(4), rule 482(b)(4) and the Instruction to Item 4(b)(1)(ii) of Form N-1A to clarify that the omission would be permitted only in the case of contractual commitments to provide financial support, and not in the case of informal agreements that may not be enforceable.

As discussed in more detail below, we are adopting amendments that would require money market funds to disclose current and historical instances of affiliate financial support on Form N-CR and Form N-1A, respectively. *See infra* sections III.F.3, III.E.7.

909 *See* Rule 482(b)(4)(i); Form N-1A Item 4(b)(1)(ii)(A). Besides the amendments to the disclosure statement requirements set forth in Rule 482(b)(4)(i) and Form N-1A Item 4(b)(1)(ii)(A), we also are adopting non-substantive changes to the text of these rule and form provisions. Funds may omit the last sentence regarding sponsor support under certain circumstances, such as when a fund's sponsor has contractually

Below we describe in detail the ways in which the format and content of the required disclosure statement that we are adopting today differ from that which we proposed, as well as the reasons for these differences.

b. Format of the statement

We have decided not to adopt the proposed requirement that funds provide the statement in a bulleted format. One commenter argued that prescribing a specific graphical format is not necessary and might be difficult to execute in certain forms of advertising, such as social media.[910] We agree. We also believe that refraining from requiring funds to provide the disclosure statement in a bulleted format, in combination with other modifications discussed below that shorten the disclosure statement, addresses concerns raised by commenters that the length of the proposed disclosure statement could draw attention away from other important information in an advertisement or sales materials.[911]

c. Disclosure concerning general risk of investment loss

As proposed, the required disclosure statement would have included a bulleted statement providing: "You could lose money by investing in the Fund." We are adopting identical content in the required disclosure statement. As discussed in the proposal, we have taken into

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committed to provide support to the fund. *See supra* note 908; Instructions to Item 4(b)(1)(ii) of Form N-1A; Note to paragraph (b)(4), rule 482(b)(4). The proposal likewise would have permitted this omission from the proposed disclosure statement. *See* Proposing Release, *supra* note 25, at nn.307 and 313. As discussed in more detail below, we are adopting amendments that would require money market funds to disclose current and historical instances of affiliate financial support on Form N-CR and Form N-1A, respectively. *See infra* sections III.F.3, III.E.7.

910 *See* ABA Business Law Section Comment Letter.

911 *See* NYC Bar Committee Comment Letter (noting that, particularly in inherently brief formats like advertisements, there is a risk that mandated legends may crowd out material informational content); ABA Business Law Section Comment Letter (arguing that the proposed disclosure statement could take up so much of the space available in an advertisement that it will discourage investors from viewing other important information in the communication).

consideration investor preferences for clear, concise, and understandable language in adopting the required disclosure and also have considered whether strongly-worded disclaimer language would more effectively convey the particular risks associated with money market funds than more moderately-worded language would.[912] We received one comment on this language arguing that it is duplicative with other language in the required disclosure statement.[913] We have responded to this comment by shortening and modifying the required disclosure statement.[914]

d. Disclosure concerning fees and gates

As proposed, the required disclosure statement would have included bulleted statements providing: "The Fund may impose a fee upon sale of your shares when the Fund is under considerable stress" and "The Fund may temporarily suspend your ability to sell shares of the Fund when the Fund is under considerable stress." Instead of including these bullet points in the required disclosure, we are adopting similar content in the required disclosure statement providing: "The Fund may impose a fee upon the sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors." One commenter, while generally supporting the proposed statement, suggested that the statement be amended to say that the fund could impose a fee or a gate "in order to protect shareholders of the Fund."[915] One commenter expressed concerns about requiring the inclusion of statements about fees and gates in advertisements or other sales

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912 *See* Proposing Release, *supra* note 25, at nn.316-317.

913 *See* Federated VIII Comment Letter.

914 As proposed, the required disclosure statement included the statements "You could lose money by investing in the Fund" and "Your investment in the Fund therefore may experience losses." As adopted, the required disclosure statement no longer includes the second statement, which could be construed to be repetitive with the first.

915 *See* HSBC Comment Letter.

materials, arguing that the description of circumstances and conditions under which fees and gates might be imposed is difficult to reduce to a brief statement.[916] No commenters explicitly supported the inclusion of the term "considerable stress," and several commenters argued that this term was not clear, and may cause investors to believe that funds could impose fees and gates arbitrarily or, conversely, only during extreme market events.[917] To address this concern, one commenter suggested requiring a different term than "considerable stress," arguing that this term overstates the prospect for imposing fees or gates.[918] Other commenters suggested that the disclosure state explicitly that a fee or gate could be imposed as a result of a reduction in the fund's liquidity.[919] Commenters also suggested that any disclosure regarding fees and gates could be combined into a single statement.

After considering the comments, we continue to believe that disclosure about fees or gates should be included in advertisements, sales materials, and the summary section of the prospectus. Even some commenters that expressed concerns about including the disclosure in advertisements acknowledged that the possible imposition of fees and gates is information that is likely to be important to investors.[920] As we stated in the Proposing Release, we are concerned that investors will not be fully aware of potential restrictions on fund redemptions. To address commenters' concerns regarding the ambiguity of the term "considerable stress," we have revised the statement, as suggested by commenters, to make clear that funds could impose a fee

[916] *See* NYC Bar Committee Comment Letter.

[917] *See* NYC Bar Committee Comment Letter; ABA Business Law Section Comment Letter; Dreyfus Comment Letter.

[918] *See* Dreyfus Comment Letter.

[919] *See* NYC Bar Committee Comment Letter; ABA Business Law Section Comment Letter.

[920] *See* ABA Business Law Section Comment Letter; NYC Bar Committee Comment Letter.

or gate in response to a reduction in the fund's liquidity. The statement does not include a reference that a fee or gate could be imposed "to protect investors of the fund," as suggested by one commenter. We believe that including the additional suggested language could detract from the statement's emphasis that a fee or gate could be imposed, which could in turn diminish shareholders' awareness of potential restrictions on fund redemptions. The language we have adopted reflects commenter suggestions that any disclosure regarding fees or gates be combined into a single statement. We believe that the adopted language also responds to commenter concerns about the difficulty of briefly describing the conditions under which fees and gates might be imposed by providing that fees and gates could be imposed if "the Fund's liquidity falls below required minimums because of market conditions or other factors."

e. Disclosure concerning sponsor support

As proposed, the required disclosure statement would have included a bulleted statement providing: "The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time." We are adopting identical content in the required disclosure statement. Several commenters opposed the inclusion of a reference to sponsor support in the required disclosure statement.[921] Some commenters argued that the disclosure would raise sponsor support to an unwarranted level of prominence, noting that there have not been any studies to determine whether investors actually rely on the potential for sponsor support as a factor when determining

921 *See* Dreyfus Comment Letter; NYC Bar Committee Comment Letter; ABA Business Law Section Comment Letter. *But see* CFA Institute Comment Letter; HSBC Comment Letter (both generally supporting the proposed disclosure statement, including the language discussing sponsor support).

whether to invest in a money market fund.[922] Commenters also were concerned that investors will not understand the disclosure in fund advertisements, since advertisements will not afford space or opportunity to explain to investors who the fund's "sponsor" is and what "financial support" means.[923]

We continue to believe that the disclosure statement should include a statement that the fund's sponsor has no obligation to provide financial support. In the Proposing Release, we recognized that particular instances of sponsor support were not particularly transparent to investors in past years because sponsor support generally was not immediately disclosed, and was not required to be disclosed by the Commission.[924] But although investors might not have known of particular instances of sponsor support, we believe that many investors, particularly institutional investors, have historically understood that there was a possibility of financial support from the money market fund's sponsor and that this possibility has affected investors' perceptions about the level of risk in investing in money market funds.[925] We therefore disagree with the commenter who suggested that investors were generally unaware of this practice preceding and during the financial crisis.[926] For this reason, we believe that it is important to emphasize to investors that they should not expect a fund sponsor to provide financial support to

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922 *See, e.g.,* ABA Business Law Section Comment Letter; NYC Bar Committee Comment Letter.

923 *Id.*

924 Proposing Release, *supra* note 25, at section II.B.3.

925 *See, e.g.*, Roundtable Transcript, *supra* note 63 (Lance Pan, Capital Advisors Group) ("over the last 30 or 40 years, [investors] have relied on the perception that even though there is risk in money market funds, that risk is owned somehow implicitly by fund sponsors. So once they perceive that they are not able to get that additional assurance, I believe that was one probably cause of the run.").

926 *See* NYC Bar Committee Comment Letter (arguing that the Commission's discussion of the lack of transparency regarding instances of sponsor support shows that the proposed risk statement addresses a practice that investors were not aware of during the financial crisis).

the fund.

For similar reasons, we disagree with one commenter who argued that requiring this disclosure is at odds with the requirement that funds publicly disclose instances of sponsor support.[927] As discussed below, we are requiring funds to disclose current and historical instances of sponsor support because we believe that such disclosure will help investors better understand the risks of investing in the funds.[928] This reporting, which should help investors understand instances when the fund has come under stress, provides historical information about the fund. The required disclosure statement, on the other hand, is a forward-looking risk statement that reminds current and prospective investors that sponsors do not have an obligation to provide sponsor support and that investors should not expect that sponsors will provide support in the future.

Finally, we are not persuaded that the disclosure regarding sponsor support should not appear in advertisements because this disclosure will not be understood by investors. We recognize that upon reading the disclosure statement, investors might have questions regarding financial support from sponsors, as commenters indicated, including questions regarding who the fund's "sponsor" is, or what constitutes "financial support."[929] We believe, however, that funds can address this issue through more complete disclosure elsewhere in the fund prospectus if they believe it is necessary.

f. Disclosure for floating NAV funds

As proposed, the required disclosure statement for floating NAV funds would have

[927] *See* Dreyfus Comment Letter.

[928] *See infra* notes 1007-1010, 1132 and accompanying text.

[929] *See* ABA Business Law Section Comment Letter; NYC Bar Committee Comment Letter.

included bulleted statements providing: "You should not invest in the Fund if you require your investment to maintain a stable value" and "The value of the Fund will increase and decrease as a result of changes in the value of the securities in which the Fund invests. The value of the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer." Instead of including these bullet points in the required disclosure, we are adopting similar content in the required disclosure statement providing: "Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them." While one commenter questioned whether the proposed disclosure was necessary for investors in institutional prime funds,[930] we believe it is important to emphasize to investors the potential impact of a floating NAV.[931] In response to suggestions by commenters,[932] we have decided not to require that the disclosure statement include the proposed statement that investors that require a stable value not invest in the fund. We were persuaded by commenters that the term "stable value" is often used by financial advisers when referring to certain investment products, at least some of which do have a variable NAV.[933] We are also not including in the disclosure requirements the proposed statements about the relationship between the fund share

930 *See* Dreyfus Comment Letter ("[W]e also question the Commission's concern that investors will fail to understand that the value of the [floating NAV] MMF will fluctuate. We question at what point investors will be given the benefit of the doubt for understanding the product in which they are invested and when such concerns will cease to drive additional regulatory action.")

931 *Cf.* ABA Business Law Section Comment Letter (suggesting that "floating NAV money market funds include in their advertisements a statement that their principal value will fluctuate so that an investor's shares, when redeemed may be worth more or less than their original cost"); CFA Institute Comment Letter (stating that "[d]isclosures are needed to alert investors to the potential for loss of principal and interest").

932 *See* NYC Bar Committee Comment Letter; ABA Business Law Section Comment Letter.

933 *See* NYC Bar Committee Comment Letter (noting that "stable value" commonly refers to a "retirement product that will use a combination of government bonds, guaranteed return insurance wrappers and potentially other synthetic instruments to deliver a minimum rate of return").

price and the value of the fund's underlying securities and the risk factors that can affect the value of the fund's underlying securities. We were persuaded by one commenter who noted that discussion of specific risk factors will be addressed in other areas of the prospectus, including the summary prospectus.[934] We also believe that not including these statements addresses more general concerns expressed by commenters regarding the length and efficacy of the proposed disclosure statement.[935]

2. *Disclosure of Tax Consequences and Effect on Fund Operations—Floating NAV*

As discussed in the Proposing Release, the requirement that institutional prime money market funds transition to a floating NAV will entail certain additional tax- and operations-related disclosure, but these disclosure requirements do not necessitate rule and form amendments.[936] As noted above, taxable investors in institutional prime money market funds, like taxable investors in other types of mutual funds, may now experience taxable gains and losses.[937] Currently, funds are required to describe in their prospectuses the tax consequences to shareholders of buying, holding, exchanging, and selling the fund's shares.[938] Accordingly, we expect that, pursuant to current disclosure requirements, floating NAV money market funds

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934 *See* Dreyfus Comment Letter.

935 *See* ABA Business Law Section Comment Letter; NYC Bar Committee Comment Letter. The required disclosure statement that we are adopting today (*see supra* text accompanying note 909) is about 30% shorter than the proposed bulleted disclosure statement. (We have modified the proposed bulleted disclosure statement to encompass the proposed language referencing fluctuating share price as well as the ability of a fund to impose fees or gates. The Proposing Release conceived of two separate reform approaches, each with its own disclosure statement, while this Release combines the approaches into a single reform package, and the disclosure statement we are adopting therefore references both reform elements, as appropriate.)

936 Prospectus disclosure regarding the tax consequences of these activities is currently required by Form N-1A. *See* Item 11(f) of Form N-1A.

937 *See supra* section III.B.6.

938 *See* Item 11(f) of Form N-1A.

would include disclosure in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling the shares of the floating NAV fund. In addition, we expect that a floating NAV money market fund would update its prospectus and SAI disclosure regarding the purchase, redemption, and pricing of fund shares, to reflect any changes resulting from the fund's use of a floating NAV.[939] We also expect that a fund that intends to qualify as a retail money market fund would disclose in its prospectus that it limits investment to accounts beneficially owned by natural persons.[940] The Proposing Release requested comment on the disclosure that we expect floating NAV money market funds would include in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling shares of the fund, as well as the effects (if any) on fund operations resulting from the transition to a floating NAV. We received no comments directly discussing this disclosure.

3. *Disclosure of Transition to Floating NAV*

Currently, a fund must update its registration statement to reflect any material changes by means of a post-effective amendment or a prospectus supplement (or "sticker") pursuant to rule 497 under the Securities Act.[941] As discussed in the Proposing Release, we would expect that, to meet this existing requirement, at the time that a stable NAV money market fund transitions to a floating NAV (or adopts a floating NAV in the course of a merger or other reorganization), it would update its registration statement to include relevant related disclosure, as discussed in sections III.E.1 and III.E.2 of this Release, by means of a post-effective amendment or a

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[939] We expect that a floating NAV money market fund would include this disclosure (as appropriate) in response to, for example, Item 11 ("Shareholder Information") and Item 23 ("Purchase, Redemption, and Pricing of Shares") of Form N-1A.

[940] *See supra* note 692 and accompanying text.

[941] *See* 17 CFR 230.497.

prospectus supplement. Two commenters explicitly supported that such disclosures be made when transitioning to a floating NAV.[942] We continue to believe that a money market fund must update its registration statement by means of a post-effective amendment or "sticker" to reflect relevant disclosure related to a transition to a floating NAV.

4. *Disclosure of the Effects of Fees and Gates on Redemptions*

As we discussed in the proposal, pursuant to the existing requirements in Form N-1A, funds must disclose any restrictions on fund redemptions in their registration statements.[943] As discussed in more detail below, we expect that, to comply with these existing requirements, money market funds (other than government money market funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii) and that have not chosen to rely on the ability to impose liquidity fees and suspend redemptions) will disclose in the registration statement the effects that the potential imposition of fees and/or gates, including a board's discretionary powers regarding the imposition of fees and gates, may have on a shareholder's ability to redeem shares of the fund. This disclosure should help investors evaluate the costs they could incur in redeeming fund shares—one of the goals of this rulemaking.

Commenters generally agreed that this disclosure would help investors understand the effects of fees and gates on redemptions.[944] One commenter specifically agreed that Items 11(c)(1) and 23 of Form N-1A would require money market funds to fully describe the circumstances under which liquidity fees could be charged or redemptions could be suspended or

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942 *See* HSBC Comment Letter; PWC Comment Letter.

943 *See* Items 11(c)(1) and 23 of Form N-1A.

944 *See, e.g.*, UBS Comment Letter; Chamber II Comment Letter; Federated VIII Comment Letter.

reinstated.[945] In addition, two commenters noted that the prospectus should include disclosure of a board's discretionary powers regarding the imposition of fees and gates, which would serve to emphasize further the nature of money market funds as investments subject to risk.[946] The Proposing Release requested comment on the utility of including additional disclosure about the operations and effects of fees and redemption gates, including (i) requiring information about the basic operations of fees and gates to be disclosed in the summary section of the statutory prospectus (and any summary prospectus, if used) and (ii) requiring details about the fund's liquidation process. One commenter argued against the utility of such additional disclosure in helping investors to understand the effects of fees and gates on redemptions.[947] We agree and decided against making any changes to the rule text in this regard.

As discussed in the Proposing Release, we expect money market funds to explain in the prospectus the various situations in which the fund may impose a liquidity fee or gate.[948] For example, money market funds would briefly explain in the prospectus that if the fund's weekly liquid assets fall below 30% of its total assets and the fund's board determines it is in the best interests of the fund, the fund board may impose a liquidity fee of no more than 2% and/or

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945 *See* Federated VIII Comment Letter (suggesting that Form N-1A also would require money market funds to describe how shareholders would be notified thereof, as well as other implications for shareholders, such as the tax consequences associated with the money market fund's receipt of liquidity fees).

946 *See* UBS Comment Letter; Chamber II Comment Letter.

947 *See* Federated VIII Comment Letter (arguing that: (i) requiring disclosure in the summary prospectus about "an exigent circumstance (*i.e.*, charging liquidity fees or suspending redemptions) which is highly unlike[ly] to ever occur" would be "highly inconsistent with the Commission's goal of 'providing prospectuses that are simpler, clearer, and more useful to investors'"; and (ii) no money market funds have relied on rule 22e-3 to suspend the redemption of shares and liquidate the fund since the rule's adoption, and thus suggesting that disclosure about a fund's liquidation process would not be useful to investors).

948 Proposing Release, *supra* note 25, at section III.B.8.

temporarily suspend redemptions for a limited period of time.[949] We also expect money market funds to briefly explain in the prospectus that if the fund's weekly liquid assets fall below 10% of its total assets, the fund will impose a liquidity fee of 1% on all redemptions, unless the board of directors of the fund (including a majority of its independent directors) determines that imposing such a fee would not be in the best interests of the fund or determines that a lower or higher fee (not to exceed 2%) would be in the best interests of the fund.[950]

As discussed in the Proposing Release, we expect money market funds to incorporate additional disclosure in the prospectus or SAI, as the fund determines appropriate, discussing the operations of fees and gates in more detail. Prospectus disclosure regarding any restrictions on redemptions is currently required by Item 11(c)(1) of Form N-1A. In addition to the disclosure required by Item 11(c)(1), we believe that funds could determine that more detailed disclosure about the operations of fees and gates, as further discussed in this section, would appropriately appear in a fund's SAI, and that this more detailed disclosure is responsive to Item 23 of Form N-1A ("Purchase, Redemption, and Pricing of Shares"). In determining whether and/or to what extent to include this disclosure in the prospectus or SAI, money market funds should rely on the principle that funds should limit disclosure in prospectuses generally to information that "would be most useful to typical or average investors in making an investment decision."[951] Detailed or highly technical discussions, as well as information that may be helpful to more sophisticated

[949] *See* Items 11(c)(1) and 23 of Form N-1A.

[950] *See* Items 11(c)(1) and 23 of Form N-1A.

[951] *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)], at section I.

investors, dilute the effect of necessary prospectus disclosure and should be placed in the SAI.[952]

Based on this principle, we anticipate that funds generally would consider the following disclosure to be appropriate for the prospectus, as disclosure regarding redemption restrictions provided in response to Item 11(c)(1) of Form N-1A: (i) means of notifying shareholders about the imposition and lifting of fees and/or gates (*e.g.*, press release, website announcement); (ii) timing of the imposition and lifting of fees and gates, including (a) an explanation that if a fund's weekly liquid assets fall below 10% of its total assets at the end of any business day, the next business day it must impose a 1% liquidity fee on shareholder redemptions unless the fund's board of directors determines that doing otherwise is in the best interests of the fund, (b) an explanation that if a fund's weekly liquid assets fall below 30% of its total assets, it may impose fees or gates as early as the same day, and (c) an explanation of the 10 business day limit for imposing gates; (iii) use of fee proceeds by the fund, including any possible return to shareholders in the form of a distribution; (iv) the tax consequences to the fund and its shareholders of the fund's receipt of liquidity fees; and (v) general description of the process of fund liquidation[953] if the fund's weekly liquid assets fall below 10%, and the fund's board of directors determines that it would not be in the best interests of the fund to continue operating.[954]

In addition, we expect that a government money market fund that is not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii), but that later decides to rely on the

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952 *Id.*

953 *See supra* section III.A.4.

954 One commenter argued that it was unnecessary to describe the process of fund liquidation in either the prospectus or SAI. *See* Federated VIII Comment Letter. We note that we are not mandating particular disclosures, but rather providing examples of the types of disclosures we believe that money market funds could provide in the prospectus or SAI. We further note that it is important for funds to ensure that investors are fully aware of the ability of the fund to permanently suspend redemptions and liquidate.

ability to impose liquidity fees and suspend redemptions, would update its registration statement to reflect the changes by means of a post-effective amendment or a prospectus supplement pursuant to rule 497 under the Securities Act. In addition, a government fund that later opts to rely on the ability to impose fees and gates provided in rule 2a-7(c)(2)(iii) should consider whether to provide any additional notice to its shareholders of that election.[955]

5. *Historical Disclosure of Liquidity Fees and Gates*

We are amending Form N-1A, generally as proposed, but with certain modifications as discussed below, to require that money market funds provide disclosure in their SAIs about historical occasions in which the fund has considered or imposed liquidity fees or gates.[956] As proposed, we would have required funds to disclose: (i) the length of time for which the fund's weekly liquid assets remained below 15%: (ii) the dates and length of time for which the fund's board of directors determined to impose a liquidity fee and/or temporarily suspend the fund's redemptions; and (iii) a short discussion of the board's analysis supporting its decision to impose a liquidity fee (or not to impose a liquidity fee) and/or temporarily suspend the fund's redemptions.[957] As discussed below, we are adopting modified thresholds for imposing fees and gates from what was proposed; consequently, the amendments we are adopting to Form N-1A to require historical disclosure of liquidity fees and gates have been modified from the proposed amendments to conform to these amended threshold levels. In addition, in a change from the proposed historical disclosure requirements, the Form N-1A amendments we are adopting

[955] We note that 60-day notice is required by our rules for other significant changes by funds, for example, when a fund changes its name. *See* rules 35d-1(a)(2)(ii) and (a)(3)(iii).

[956] As we proposed, this historical disclosure would only apply to such events that occurred after the compliance date of the amendments. *See* Proposing Release, *supra* note 25, at n.983.

[957] *See* Proposing Release, *supra* note 25, at section III.B.8.d.

require a fund to disclose the size of any liquidity fee imposed during the specified look-back period. We have also determined not to adopt the proposed requirement to disclose "a short discussion of the board's analysis supporting its decision to impose a liquidity fee (or not to impose a liquidity fee) and/or temporarily suspend the fund's redemptions" for the reasons detailed below.

Specifically, we are amending Form N-1A to require that money market funds (other than government money market funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii))[958] provide disclosure in their SAIs regarding any occasion during the last 10 years (but not for occasions that occurred before the compliance date of these amended rules)[959] on which (i) the fund's weekly liquid assets have fallen below 10%, and with respect to each such occasion, whether the fund's board of directors determined to impose a liquidity fee and/or suspend the fund's redemptions, or (ii) the fund's weekly liquid assets have fallen below 30% (but not less than 10%) and the fund's board of directors determined to impose a liquidity fee and/or suspend the fund's redemptions.[960] With respect to each occasion, we are requiring funds to disclose: (i) the length of time for which the fund's weekly liquid assets remained below 10% (or 30%, as applicable); (ii) the dates and length of time for which the fund's board

958 Rule 2a-7(c)(2)(iii).

959 *See infra* section III.N.

960 *See* amended Item 16(g)(1) of Form N-1A. The disclosure required by Item 16(g)(1) should incorporate, as appropriate, any information that the fund is required to report to the Commission on Items E.1, E.2, E.3, E.4, F.1, F.2, and G.1 of Form N-CR. *See* Instruction 2 to Item 16(g)(1). This represents a slight change from the proposal, in that the required disclosure is now the same as what would be disclosed in the initial filings of Form N-CR. We have made this change to reduce the burdens associated with such disclosure so that funds need only prepare this information once in a single manner. For the reasons discussed in section III.F of this Release, Form N-CR includes a new requirement that funds report their level of weekly liquid assets at the time of the imposition of fees or gates, and accordingly, we are also requiring similar disclosure here. *See* Form N-CR Items E.3 and F.1.

of directors determined to impose a liquidity fee and/or temporarily suspend the fund's redemptions; and (iii) the size of any liquidity fee imposed.[961]

We proposed to require a fund to provide disclosure in its SAI regarding any occasion during the last 10 years (but not before the compliance date) in which the fund's weekly liquid assets had fallen below 15%, and with respect to each such occasion, whether the fund's board of directors determined to impose a liquidity fee and/or suspend the fund's redemptions.[962] As discussed previously, the final amendments contain modified thresholds for imposing fees and gates from what was proposed,[963] and we are therefore modifying the disclosure requirements to conform to these amended threshold levels.

As proposed, the SAI disclosure requirements would not have directly required a fund to disclose the size of any liquidity fee imposed. We are modifying the SAI disclosure requirements to require a fund to disclose the size of any liquidity fee it has imposed during the specified look-back period. As discussed below in the context of the Form N-CR disclosure requirements we are adopting, because we are revising the default liquidity fee from the proposed 2% to 1%, and thus we expect that there may be instances where liquidity fees are above or below the default fee (rather than just lower as permitted under the proposal), we are requiring that funds disclose the size of the liquidity fee, if one is imposed.[964]

One commenter specifically supported the proposed 10-year "look-back" period for the historical disclosure, noting that a 10-year period should capture a number of different market

[961] *See* Instructions to amended Item 16(g)(1) of Form N-1A.

[962] *See* Proposing Release, *supra* note 25, at section III.B.8.d.

[963] *See supra* section III.A.2.

[964] *See infra* note 1316 and accompanying text.

stresses delivering a meaningful sample.[965] Another commenter suggested limiting SAI disclosure to a five-year period prior to the effective date of the registration statement incorporating the SAI disclosure, although this commenter did not provide specific reasons why this shortened look-back period would be appropriate.[966] After further consideration, and given that commenters did not provide any specific reasons for implementing a shortened look-back period, we continue to believe that a 10-year look-back period provides shareholders and the Commission with a historical perspective that would be long enough to provide a useful understanding of past events. We believe that this period would provide a meaningful sample of stresses faced by individual funds and in the market as a whole, and to analyze patterns with respect to fees and gates, but would not be so long as to include circumstances that may no longer be a relevant reflection of the fund's management or operations.

As discussed in the Proposing Release, we continue to believe that money market funds' current and prospective shareholders should be informed of historical occasions in which the fund's weekly liquid assets have fallen below 10% and/or the fund has imposed liquidity fees or redemption gates. While we recognize that historical occurrences are not necessarily indicative of future events, we anticipate that current and prospective fund investors could use this information as one factor to compare the risks and potential costs of investing in different money market funds. The DERA Study analyzed the distribution of weekly liquid assets and found that 83 prime funds per year, corresponding to 2.7% of the prime funds' weekly liquid asset observations, saw the percentage of their total assets that were invested in weekly liquid assets

965 *See* HSBC Comment Letter.

966 *See* Federated VIII Comment Letter.

fall below 30%. The DERA Study further showed that less than one (0.6) fund per year, corresponding to 0.01% of the prime funds' weekly liquid asset observations, experienced a decline of total assets that were invested in weekly liquid assets to below 10%.[967] We believe that funds will, in general, try to avoid the need to disclose decreasing percentages of weekly liquid assets and/or the imposition of a liquidity fee or gate, as required under the new amendments to Form N-1A,[968] by keeping the percentage of their total assets invested in weekly liquid assets at or above 30%. Of those 83 funds that reported a percentage of total assets invested in weekly liquid assets below 30%, it is unclear how many, if any, would have attempted to keep the percentage of their total assets invested in weekly liquid assets at or above 30% to avoid having to report this information on their SAI (assuming they were to impose, at their board's discretion, a liquidity fee or gate).

The required disclosure will permit current and prospective shareholders to assess, among other things, patterns of stress experienced by the fund, as well as whether the fund's board has previously imposed fees and/or redemption gates in light of declines in portfolio liquidity. This disclosure also provides investors with historical information about the board's past analytical process in determining how to handle liquidity issues when the fund experiences stress, which could influence an investor's decision to purchase shares of, or remain invested in, the fund. In addition, the required disclosure may impose market discipline on portfolio managers to monitor and manage portfolio liquidity in a manner that lessens the likelihood that the fund would need to

[967] *See* DERA Study, *supra* note 24, at 27.

[968] *See supra* notes 960 and 961 and accompanying text.

implement a liquidity fee or gate.[969] One commenter explicitly supported the utility of these disclosure requirements in providing investors with useful information regarding the frequency of the money market fund's breaching of certain liquidity thresholds, whether a fee or gate was applied, and the level of fee imposed, stating that "[t]his will allow investors to make informed decisions when determining whether to invest in [money market funds] and when comparing different [money market funds]."[970] No commenter argued that disclosure about the historical fact of occurrence of fees and gates would not be useful to investors. However, some commenters raised concerns about the potential redundancy of the proposed registration statement, website, and Form N-CR disclosure requirements.[971]

As discussed above, we also have determined not to adopt the proposed requirement for a fund to disclose "a short discussion of the board's analysis supporting its decision to impose a liquidity fee (or not to impose a liquidity fee) and/or temporarily suspend the fund's redemptions" in its SAI (or as discussed below, on its website).[972] We note that Form N-CR, as proposed, also would have required a fund imposing a fee or gate to disclose a "discussion of the board's analysis" supporting its decision, and a number of commenters objected to this proposed requirement.[973] In particular, commenters raised concerns that the disclosures proposed to be required in Form N-CR and Form N-1A would not be material to investors, would be burdensome to disclose, would chill deliberations among board members and hinder board

969 *See supra* notes 157 and 162 and accompanying text.

970 HSBC Comment Letter.

971 *See, e.g.,* Dreyfus Comment Letter; SIFMA Comment Letter.

972 However, as discussed below in section III.F.5, Form N-CR will require a fund to disclose the primary considerations or factors taken into account by the fund's board in its decision to impose a liquidity fee or gate.

973 *See infra* section III.F.5.

confidentiality, and would encourage opportunistic litigation.[974] Commenters also argued that disclosure of the board's analysis is not necessary to disclose patterns of stress in a fund and that this disclosure is not likely to be a meaningful indication of the board's analytical process going forward.[975]

We discuss these commenters' concerns in detail in section III.F below and also provide our analysis supporting our attempt to balance these concerns with our interest in permitting the Commission and shareholders to understand why a board imposed (or did not impose) a liquidity fee or gate. As a result of these considerations and the analysis discussed in section III.F below, we have adopted a Form N-CR requirement to require disclosure of the primary considerations or factors taken into account by the fund's board in its decision to impose a liquidity fee or gate. However, in order to avoid unnecessary duplication in the disclosure that will appear in a fund's SAI and on Form N-CR, we have determined not to require parallel disclosure of these considerations or factors in the fund's SAI. Instead, a fund will only be required to present certain summary information about the imposition of fees and/or gates in its SAI (as well as on

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974 *See infra* notes 1289-1293 and accompanying text. Most commenters made these arguments in reference to the proposed Form N-CR disclosure requirement; however, several commenters also specifically referenced the proposed identical Form N-1A disclosure requirement. *See* SIFMA Comment Letter; Stradley Ronon Comment Letter.

975 *See* SIFMA Comment Letter; Stradley Ronon Comment Letter (both stating that requiring disclosure of the board's analysis is not necessary to disclose patterns of stress in a fund, and that patterns of stress will be apparent via the proposed disclosures of historical sponsor support and liquidity shortfalls). We note that the Proposing Release does not specifically state that disclosure of the board's analysis supporting its decision to impose a liquidity fee or temporarily suspend the fund's redemptions would permit shareholders to assess patterns of stress. Rather, the Proposing Release states that the proposed historical disclosure of liquidity fees and gates (which disclosure would include a discussion of the board's analysis supporting its decision to impose a liquidity fee or gate) generally would assist shareholders in assessing patterns of stress. *See* Proposing Release, *supra* note 25, at section III.B.8.d. We continue to believe that historical disclosure of fees and gates, which would include disclosures of historical liquidity shortfalls, would assist shareholders in understanding patterns of stress faced by the fund. *See supra* notes 969-970 and accompanying text. We believe that this historical disclosure complements the disclosure of historical instances of sponsor support in understanding patterns of stress.

the fund's website[976]), and will be required to present more detailed discussion solely on Form N-CR.[977] To inform investors about the inclusion of this more detailed information on Form N-CR, funds will be instructed to include the following statement as part of their SAI disclosure about the historical occasions in which the fund has considered or imposed liquidity fees or gates: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."[978] In adopting these modified SAI disclosure requirements, we have attempted to balance concerns about potentially duplicative disclosure[979] with our interest in presenting the primary information about the fund's historical imposition of fees or gates that we believe shareholders may find useful in assessing fund risks.

6. Prospectus Fee Table

As proposed, we are clarifying in the instructions to Item 3 of Form N-1A ("Risk/Return Summary: Fee Table") that the term "redemption fee," for purposes of the prospectus fee table, does not include a liquidity fee that may be imposed in accordance with rule 2a-7.[980] Commenters on this aspect of our proposal agreed that the liquidity fee should not be included in

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976 *See infra* section III.E.9.f.

977 *See infra* section III.F.5.

978 *See* instructions to amended Item 16(g)(1) of Form N-1A.

979 *See supra* note 971 and accompanying text. As discussed in more detail in section III.F.5 below, while similar information is required to be included on Form N-CR and on Form N-1A, we believe each of these different disclosures to be appropriate because they serve distinct purposes. *See infra* notes 1308-1309 and accompanying text.

980 *See* Instruction 2(b) to amended Item 3 of Form N-1A.

the prospectus fee table.[981] For example, one commenter stated that the fees and expenses table is intended to show a typical investor the range of anticipated costs that will be borne by the investor directly or indirectly as a shareholder, but is not an ideal presentation for the kind of highly contingent cost that would be represented by a liquidity fee.[982]

As discussed in the Proposing Release and as adopted today, a liquidity fee will only be imposed when a fund experiences stress, and because we anticipate that a particular fund would impose this fee rarely, if at all,[983] we continue to believe that the prospectus fee table, which is intended to help shareholders compare the costs of investing in different mutual funds, should not include the liquidity fee.[984] We also note, as discussed above, that shareholders will be adequately informed about liquidity fees through other disclosures in funds' SAI and summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used).[985] If a fund imposes a liquidity fee, shareholders will also be informed about the imposition of this fee on the fund's website[986] and possibly by means of a prospectus supplement.[987] A fund could also provide complementary shareholder communications, such as a press release or social media update.[988] Accordingly, we are adopting the clarifying instruction to Item 3 as proposed.

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981 *See, e.g.*, HSBC Comment Letter; NYC Bar Committee Comment Letter; Dreyfus Comment Letter.

982 *See* NYC Bar Committee Comment Letter.

983 *See supra* note 247 and accompanying text.

984 Instruction 2(b) to Item 3 of Form N-1A currently defines "redemption fee" to include any fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption.

985 *See supra* section III.E.4.

986 *See infra* section III.E.9.f.

987 *See infra* text accompanying notes 1126 and 1127.

988 *See infra* text following note 1123.

7. *Historical Disclosure of Affiliate Financial Support*

As discussed above in section II.B.4, voluntary support provided by money market fund sponsors and affiliates has played a role in helping some money market funds maintain a stable share price, and, as a result, may have lessened investors' perception of the level of risk in money market funds. Such discretionary sponsor support was, in fact, not unusual during the financial crisis.[989] Today we are adopting, with certain modifications from the proposal to address commenter concerns, amendments that require that money market funds disclose current and historical instances of affiliate "financial support." The final amendments define "financial support" in the same way it is defined in Form N-CR,[990] and specify that funds should incorporate certain information that the fund is required to report on Form N-CR in their SAI disclosure.[991] We discuss this definition in detail, including the modifications we have made to address commenter concerns, in section III.F.[992] This represents a slight change from the proposal, in that the required disclosure is now identical to what would be disclosed in the initial filings of Form N-CR. We have made this change to reduce the burdens associated with such

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989 *See, e.g.,* DERA Study, *supra* note 24, at nn.23-24 and accompanying text.

990 *See* Instruction 1 to Item 16(g)(2) of Form N-1A; Form N-CR Part C (defining financial support as "including any (i) capital contribution, (ii) purchase of a security from the Fund in reliance on § 270.17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) execution of letter of credit or letter of indemnity, (v) capital support agreement (whether or not the Fund ultimately received support), (vi) performance guarantee, or (vii) any other similar action reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio; excluding, *however*, any (i) routine waiver of fees or reimbursement of Fund expenses, (ii) routine inter-fund lending (iii) routine inter-fund purchases of Fund shares, or (iv) any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio.").

991 *See* Instruction 3 to Item 16(g)(2) of Form N-1A.

992 *See infra* section III.F.3.

disclosure so that funds need only prepare this information once in a single manner.[993]

In the Proposing Release, we requested comment on amending rule 17a-9 (which allows for the discretionary support of money market funds by their sponsors and other affiliates) to potentially restrict the practice of sponsor support, but did not propose any specific changes to the rule. While a few commenters suggested, in response to this request for comment, that we prohibit affiliates from providing discretionary support to maintain a money market fund's share value,[994] other commenters opposed making any changes to rule 17a-9, arguing that transactions facilitated by the rule are in the best interests of shareholders.[995] We continue to believe, as discussed in the Proposing Release, that permitting financial support (with adequate disclosure) will provide fund affiliates with the flexibility to protect shareholder interests, and we are not amending rule 17a-9 at this time.[996] Many commenters supported the various financial support disclosures we are adopting today.[997] We believe that these disclosure requirements will provide transparency to shareholders and the Commission about the frequency, nature, and amount of affiliate financial support.

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993 *See* Item 16(g)(2) of Form N-1A. The disclosure required by Item 16(g)(2) should incorporate, as appropriate, any information that the fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N-CR. *See* Instruction 2 to Item 16(g)(2).

994 *See, e.g.,* Systemic Risk Council Comment Letter; Capital Advisors Comment Letter; *see also* HSBC Comment Letter (supporting amending rule 17a-9, arguing that transactions facilitated by the rule can result in shareholders having unjustified expectations of future support being provided by sponsors).

995 *See* ICI Comment Letter; Dreyfus Comment Letter; ABA Business Law Comment Letter.

996 *See* Proposing Release, *supra* note 25, at text accompanying n.607.

997 *See, e.g.,* Oppenheimer Comment Letter ("We support the SEC's proposal to require money market funds to disclose current and historical instances of sponsor support for stable NAV funds [...]."). *See also, e.g.,* Angel Comment Letter; American Bankers Ass'n Comment Letter; Federated VIII Comment Letter; Comment Letter of Occupy the SEC (Sept. 16, 2013) ("Occupy the SEC Comment Letter"); Thrivent Comment Letter.

a. General requirements

We are adopting, with some changes from the proposal, amendments to Form N-1A to require a money market fund to disclose in its SAI historical instances in which the fund has received financial support from a sponsor or fund affiliate.[998] Specifically, each money market fund will be required to disclose any occasion during the last 10 years (but not for occasions that occurred before the compliance date of these amended rules) on which an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person,[999] provided any form of financial support to the fund. For the reasons discussed in the Proposing Release, we believe that the disclosure of historical instances of sponsor support will allow investors, regulators, academics, market observers and market participants, and other interested members of the public to understand better whether a particular fund has required financial support in the past and the extent of sponsor support across the fund industry.[1000] As proposed, with respect to each such occasion, funds would have been required to describe the nature of support, the person providing support, the relationship between the person providing support and the fund, the date the support provided, the amount of support,[1001] the security supported and its value on the date

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998 *See* Item 16(g)(2) of Form N-1A.

999 Rule 2a-7 currently requires a money market fund to notify the Commission by electronic mail, directed to the Director of Investment Management or the Director's designee, of any purchase of money market fund portfolio securities by an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, pursuant to rule 17a-9. *See* current rule 2a-7(c)(7)(iii)(B). As proposed, we are eliminating this requirement today, as it would be duplicative with the proposed Form N-CR reporting requirements discussed below. *See* rule 2a-7(f)(3); *see also infra* note 1254. However, because the definition of "financial support" as adopted today includes the purchase of a security pursuant to rule 17a-9 (as well as similar actions), we believe that the scope of the persons covered by the definition should reflect the scope of persons covered by current rule 2a-7(c)(7)(iii)(B). The term "affiliated person" is defined in section 2(a)(3) and, in the context of an investment company, includes, among other persons, the investment adviser of the investment company.

1000 *See* Proposing Release, *supra* note 25, at text following n.607.

1001 *See infra* section III.F.3 for Commission guidance on the amount of support to be disclosed.

support was initiated (if applicable), the reason for support, the term of support, and any contractual restrictions relating to support.[1002] We are adopting the proposed disclosure requirements, with the exception of the requirements for a fund to describe the reason for support, the term of support, and any contractual restrictions relating to support.

While multiple commenters supported the proposed requirement for money market funds to disclose historical instances of financial support in the fund's SAI,[1003] other commenters expressed a number of concerns about this proposed requirement.[1004] For example, one commenter opposed this disclosure, stating that "many investors would extrapolate such disclosure as an implied guarantee of future support by the sponsor of the fund."[1005] Another commenter rejected the notion that past sponsor support is indicative of a sponsor's management style and further observed that disclosure of historical support contradicts the proposed disclosure that a fund's sponsor has no legal obligation to provide support.[1006] While we acknowledge these concerns, we believe it is important for investors to understand the nature and extent that a fund's sponsor has discretionarily supported the fund in order to allow them to fully appreciate the risks of investing in the fund.[1007] Although we recognize that historical occurrences are not necessarily indicative of future events and that support does not equate to poor fund management, we continue to expect that these disclosures will permit investors to

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1002 *See* proposed Item 16(g)(2) of Form N-1A. *See infra* notes 1226-1243 and accompanying text for a discussion of actions that would be deemed to constitute "financial support" and additional discussion of what is required to be reported.

1003 *See supra* note 997.

1004 *See, e.g.*, U.S. Bancorp Comment Letter; Dreyfus Comment Letter.

1005 *See* U.S. Bancorp Comment Letter.

1006 *See* Dreyfus Comment Letter.

1007 *See supra* notes 51-55 and accompanying discussion; *see also, e.g.*, Proposing Release, *supra* note 25, at n.607 and accompanying text.

assess the sponsor's past ability and willingness to provide financial support to the fund. This disclosure also should help investors gain a better context for, and understanding of, the fund's risks, historical performance, and principal volatility.

A number of commenters stated that any disclosure of financial support, including the historical disclosures, should only apply to stable NAV funds.[1008] We disagree. Transparency of financial support is important for stable NAV funds, given the potential for a "breaking the buck" event absent the receipt of affiliate financial support. It is equally important, for both floating and stable NAV money market funds, that investors have transparency about the extent to which the fund's principal stability or liquidity profile is achieved through financial support as opposed to portfolio management. This is particularly the case when financial support for a floating NAV fund could obviate the need for it to impose a liquidity fee or redemption gate.[1009] We therefore believe that transparency of such support will help investors better evaluate the risks with respect to both stable and floating NAV funds.[1010]

Some commenters also suggested we shorten the look-back period. For example, one commenter proposed a look-back period of 3 to 5 years (rather than 10 years, as proposed).[1011]

1008 *See, e.g.*, ICI Comment Letter; IDC Comment Letter; Oppenheimer Comment Letter; Comment Letter of State Street Global Advisors (Sept. 17, 2013) ("SSGA Comment Letter").

1009 *See generally*, ABA Business Law Section (with respect to retaining rule 17a-9, stating that "the possibility of economic support from an affiliated person would remain important to money market funds that have a floating NAV because [...] liquidity concerns [remain] significant to money market funds (and other funds holding the same investments). [....] In addition, retaining [rule 17a-9] would not undercut the Commission's goal of providing transparency of money market fund risks, particularly in light of the Commission's companion proposals calling for disclosure of historical instances of economic support from sponsors of money market funds.").

1010 *See* Proposing Release, *supra* note 25, at section III.F.1.a (discussing reasons why funds should disclose historical sponsor support).

1011 *See, e.g.*, Dreyfus Comment Letter (stating that "[s]imilar kinds of information (*e.g.*, management fees and 12b-1 fees paid, officers and directors biographies, financial highlights) generally [are] required in the registration statement only for a 3-5 year period."); Federated VIII Comment Letter (recommending five

We believe, however, that a look-back period of less than 10 years would be too short to achieve our goals. As we noted in the Proposing Release,[1012] the 10-year look-back period will provide shareholders and the Commission with a historical perspective that is long enough to provide a useful understanding of past events, and to analyze patterns with respect to financial support received by the fund, but not so long as to include circumstances that may no longer be a relevant reflection of the fund's management or operations. We also note that, historically, episodes of financial support have occurred on average every 5 to 10 years.[1013] Accordingly, a shorter look-back period would result in disclosure that not does reflect the typical historical frequency of instances of financial support.

We proposed to limit historical disclosure of events of affiliate financial support to instances that occur after the compliance date of the amendments to Form N-1A.[1014] Several commenters generally supported this approach, suggesting that this disclosure requirement should only apply to events that occur after the compliance date of the disclosure reforms.[1015] We continue to believe that these disclosures should only apply to affiliate financial support events that occur after the compliance date of the disclosure reforms, in large part because to do otherwise would require funds and their affiliates to incur significant costs as they reexamine a variety of past transactions to determine whether such events fit our new definition of affiliate financial support.

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years). *But see* Occupy the SEC Comment Letter (explicitly supporting the proposed 10-year look-back period for disclosing events of financial support).

1012 *See* Proposing Release, *supra* note 25, at discussion following n.614.

1013 *See* Proposing Release, *supra* note 25, at section II.B, Table 1.

1014 As we proposed, this historical disclosure would only apply to such events that occurred after the compliance date of the amendments. *See* Proposing Release, *supra* note 25, at text accompanying n.983.

1015 *See* Federated VII Comment Letter; SIFMA Comment Letter.

Finally, a few commenters suggested disclosing historical financial support in Form N-MFP, N-CR, or N-CSR, rather than in the SAI (as proposed).[1016] One commenter noted that to the extent this disclosure will serve as a reporting function for analysis by regulators, other forms such as Form N-MFP have been developed for that particular purpose.[1017] Commenters also raised concerns about the potential redundancy of the proposed registration statement, website, and Form N-CR disclosure requirements.[1018] Because these historical sponsor support disclosures are intended to benefit investors, as well as regulators, we believe that the SAI is the most accessible and efficient format for such disclosure. As discussed in section III.F.3, we note that the contemplated SAI disclosure would consolidate historical instances of sponsor support that have occurred in the past 10 years, which would permit investors to view this information in a user-friendly manner, without the need to review prior form filings to piece together a fund's history of sponsor support. We also believe that, to the extent investors may not be familiar with researching filings on EDGAR, including this disclosure in a fund's SAI, which investors may receive in hard copy through the U.S. Postal Service or may access on a fund's website, as well as on EDGAR, may make this information more readily available to these investors than disclosure on other SEC forms that are solely accessible on EDGAR.

As discussed above, we are not adopting the proposed requirements that a fund include the reason for support, the term of support, and any contractual restrictions relating to support in its required SAI disclosure.[1019] Instead, a fund will only be required to present certain summary

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1016 *See, e.g.*, Dreyfus Comment Letter; U.S. Bancorp Comment Letter.

1017 *See* Dreyfus Comment Letter.

1018 *See, e.g.*, Dreyfus Comment Letter; SIFMA Comment Letter.

1019 *See supra* note 1002 and accompanying text.

information about the receipt of financial support in its SAI (as well as on the fund's website[1020]), and will be required to present more detailed discussion solely on Form N-CR.[1021] To inform investors about the inclusion of this more detailed information on Form N-CR, funds will be instructed to include the following statement as part of the historical disclosure of affiliate financial support appearing in the fund's SAI: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."[1022] In adopting these modified SAI disclosure requirements, we have attempted to appropriately consider concerns about potentially duplicative disclosure[1023] as well as our belief, as discussed above, that the SAI is the most accessible and efficient format for investors to receive historical disclosures about affiliate financial support, and our interest in presenting the primary information about such financial support that we believe shareholders may find useful in assessing fund risks.

b. Historical support of predecessor funds

We also are amending, generally as we proposed, the instructions to Form N-1A to clarify that funds must disclose any financial support provided to a predecessor fund (in the case of a merger or other reorganization) within the 10-year look-back period. As discussed in the

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1020 *See infra* section III.E.9.g.

1021 *See infra* section III.F.3.

1022 *See* Instructions to amended Item 16(g)(2) of Form N-1A.

1023 *See supra* note 1018 and accompanying text. As discussed in more detail in section III.F.3 below, while similar information is required to be included on Form N-CR and Form N-1A, we believe each of these different disclosures to be appropriate because they serve distinct purposes. *See* discussion following *infra* notes 1248 and 1249 and accompanying text.

Proposing Release, this amendment will provide additional transparency by providing investors the full extent of historical support provided to a fund or its predecessor. Specifically, except as noted below, the amended instructions state that if the fund has participated in a merger or other reorganization with another investment company during the last 10 years, the fund must additionally provide the required disclosure with respect to the other investment company.[1024]

Rather than require that funds disclose financial support provided to a predecessor fund in all cases (as proposed), we are revising the instruction to permit a fund to exclude such disclosure where the person or entity that previously provided financial support to the predecessor fund is not currently an affiliated person (including the adviser), promoter, or principal underwriter of the disclosing fund.[1025] A few commenters expressed concern about historical disclosures with respect to third-party reorganizations, asserting that past financial support would be irrelevant to shareholders where the surviving fund had a new manager unaffiliated with the prior manager.[1026] These commenters noted that this disclosure requirement could adversely affect potential merger transactions with funds that have received sponsor support.[1027]

We agree with these commenters that historical sponsor support information about a predecessor fund may be less relevant when the fund is not advised by, or otherwise affiliated

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1024 *See* Instruction 2 to Item 16(g)(2). Additionally, if a fund's name has changed (but the corporate or trust entity remains the same), the fund may want to consider providing the required disclosure with respect to the entity or entities identified by the fund's former name. *See* Proposing Release, *supra* note 25, at n.619.

1025 *Id.* In the Proposing Release we had proposed to require disclosure of financial support provided to a predecessor fund in all cases. *See* Proposing Release, *supra* note 25, at n.618 and accompanying discussion.

1026 *See, e.g.,* Federated VIII Comment Letter; SIFMA Comment Letter.

1027 *See id.*

with, the entity that had previously provided financial support to the predecessor fund. Accordingly, we are adopting an exclusion to this disclosure requirement based on whether the current fund continues to have any affiliation with the predecessor fund's affiliated persons (including the predecessor fund's adviser), promoter, or principal underwriter.[1028] We expect this approach should mitigate commenter concerns of adverse effects on fund mergers.

8. *Economic Analysis*

As discussed above, we are adopting a number of amendments to requirements for disclosure documents that are related to both our fees and gates and floating NAV requirements, as well as other disclosure enhancements discussed in the proposal. We believe that these amendments improve transparency and will better inform shareholders about the risks of investing in money market funds, which should result in shareholders making investment decisions that better match their investment preferences. We believe that many of these amendments will have effects on efficiency, competition, and capital formation that are similar to those that are outlined in the Macroeconomic Consequences section below,[1029] but some of the amendments introduce additional effects.

Many of the new disclosure requirements are designed to make investors aware of the more substantive amendments discussed earlier in the Release, *i.e.*, the ability of certain funds to impose redemption fees and gates and the requirement that certain funds float their NAV. Increasing investor awareness via enhanced disclosure may lead to more efficient capital allocations because investors will possess greater knowledge of risks and thus will be able to

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1028 *See* Instruction 2 to Item 16(g)(2).

1029 *See infra* section III.K.

make better informed investment decisions when deciding how to allocate their assets. Increased investor awareness also may promote capital formation if investors find a floating NAV and/or redemption fees and gates attractive and are more willing to invest in this market. For instance, investors may find fees and gates attractive insofar as imposing fees and gates during a time of market stress could help protect the interests of shareholders, or could permit a fund manager to invest the proceeds of maturing assets in short-term securities while the gate is down, thereby helping to protect the short-term financing markets.[1030] Moreover, enhanced investor awareness of fund risks may incentivize fund managers to hold less risky portfolio securities, which could also increase capital formation. Capital formation could be negatively impacted if investors find a floating NAV and/or redemption fees and gates unattractive or too complicated to understand. For instance, an investor could find it unattractive that imposing a fee or gate would prevent them from moving their investment into other investment alternatives or using their assets to satisfy liquidity needs.[1031] Additionally, disclosing a general risk of investment loss may negatively impact capital formation if this disclosure leads investors to decide that money market funds pose too great of an investment risk, and investors consequently decide not to invest in money market funds or to move their invested assets from money market funds. As such, capital formation could be negatively impacted if investors move their money from these types of funds to a different style of fund, for example, from an institutional prime fund to a government fund and thus affecting the short-term funding market. However, if investors move from a money market fund to a money market fund alternative that invests in similar types of assets, then there

1030 *See supra* section III.A.1.b.ii.

1031 *See supra* section III.A.1.c.iii.

should not be an impact on capital formation with respect to the overall economy, but only within the money market fund industry.

To the extent that the disclosure amendments increase investor awareness of the more substantive reforms, there may be an effect on competition because some of the disclosure requirements are specific to the structure of the funds. As such, these funds will be competing with each other based on, among other things, what is stated in their advertisements, sales materials, and the summary section of their statutory prospectus. Disclosure providing that funds with a stable NAV seek to preserve the value of their investment at $1.00 per share, that share prices of floating NAV funds will fluctuate, that taxable investors in institutional prime money market funds may experience taxable gains or losses, or that non-government funds may impose a fee or gate may make investors more aware of different investment options, which could increase competition between funds.

The amendments that require money market funds to disclose current and historical information about affiliate financial support and historical information about the implementation of redemption fees and gates may also affect efficiency, competition, and capital formation. As discussed in the Proposing Release, these amendments may increase informational efficiency by providing additional information to investors and the Commission about the frequency, nature, and amount of financial support provided by money market fund sponsors,[1032] as well as the frequency and duration of redemption fees and gates. This in turn could assist investors in analyzing the risks associated with particular funds, which could increase allocative efficiency and could positively affect competition by permitting investors to choose whether to invest in

1032 *See* Proposing Release, *supra* note 25, at text following n.629.

certain funds based on this information. However, the disclosure of sponsor support could advantage larger funds and fund groups, if a fund sponsor's ability to provide financial support to a fund is perceived to be a competitive benefit. The disclosure of fees and gates also could advantage larger funds and fund groups if the ability to provide financial support reduces or eliminates the need to impose fees and/or gates (the imposition of which presumably would be perceived to be a competitive detriment). Additionally, if investors move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the proposed disclosure requirements, the competitive stance of certain money market funds, or the money market fund industry generally, could be adversely affected.

The disclosure of affiliate financial support could have additional effects on capital formation, depending on whether investors interpret financial support as a sign of money market fund strength or weakness. If sponsor support (or the lack of need for sponsor support) were understood to be a sign of fund strength, the requirements could enhance capital formation by promoting stability within the money market fund industry. On the other hand, the disclosure requirements could detract from capital formation if sponsor support were understood to indicate fund weakness and make money market funds more susceptible to heavy redemptions during times of stress, or if money market fund investors decide to move their money out of money market funds entirely and not put it into an alternative with similar types of assets as a result. We did not receive comments on this aspect of our economic analysis. Similarly, the requirement to disclose historical redemption fees and gates could either promote or hinder capital formation. Disclosing the prior imposition of fees or gates may negatively impact capital formation if investors view the imposition of fees and gates unfavorably. Conversely, the requirement to disclose will allow investors to differentiate funds based on the extent to which funds have imposed fees and gates in the past, which could increase capital formation if investors perceive the absence of past fees and gates as a sign of greater stability within the money market fund industry. Furthermore, these required disclosures could assist the Commission in overseeing money market funds and developing regulatory policy affecting the money market fund industry, which might affect capital formation positively if the resulting more efficient or more effective regulatory framework encouraged investors to invest in money market funds. The Commission cannot estimate the quantitative benefits of the amendments to the disclosure forms because of uncertainty about how increased transparency may affect different investors' or groups of investors' understanding of the risks associated with money market funds. Uncertainty regarding how the proposed disclosure may affect different investors' behavior likewise makes it difficult for the Commission to measure the quantitative benefits of the proposed requirements.

As a possible alternative, we could have chosen to require disclosure, as suggested by commenters, of the historical information on Form N-MFP, Form N-CR, or Form N-CSR instead of through the SAI. Because the historical disclosures are intended to benefit both investors and regulators, we believe that the SAI is the most suitable format for such disclosure. As discussed above, we believe that including historical information about affiliate financial support and the imposition of fees and gates in the fund's SAI may make this information more readily available to investors than disclosure on other SEC forms that are solely accessible on EDGAR. We therefore believe that requiring this disclosure to appear in a fund's SAI could increase informational efficiency by facilitating the provision of this information to investors.

We believe that all money market funds will incur one-time and ongoing annual costs to update their registration statements, as well as their advertising and sales materials. The proposal estimated the costs that would be incurred under the fees and gates alterative separately from those that would be incurred under the floating NAV alternative. Under the fees and gates alternative, the proposal estimated that the average one-time costs for a money market fund (except government money market funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii)) to amend its registration statement and to update its advertising and sales materials would be $3,092,[1033] and the average one-time costs for a government fund that is not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii) would be $2,204.[1034] The proposal also estimated that the average annual costs for a money market fund (except government money market funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii)) to amend its registration statement would be $296,[1035] and the average annual costs for a government fund that is not subject to the fees and gates requirements

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1033 This figure incorporates the costs estimated for each fund to comply with the proposed amendments to Form N-1A relating to the fees and gates proposal, as well as the Form N-1A requirements relating to the fees and gates proposal that would not necessitate form amendments ($1,480) + the costs estimated for each fund to comply with the proposed Form N-1A sponsor support disclosure requirements ($148) = $1,628. The estimated costs included in section III.B.8 of the Proposing Release inadvertently omitted the costs estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement; however, these costs ($1,464) were discussed in the Paperwork Reduction Act Analysis section of the Proposing Release. Adding these costs ($1,464) to the costs of complying with the new requirements of Form N-1A ($1,628) results in total estimated costs of $3,092. *See* Proposing Release, *supra* note 25, at nn.461, 628, 1214 and accompanying text.

1034 This figure incorporates the costs estimated for each fund to comply with the proposed amendments to Form N-1A relating to the fees and gates proposal, as well as the Form N-1A requirements relating to the fees and gates proposal that would not necessitate form amendments ($592) + the costs estimated for each fund to comply with the proposed Form N-1A sponsor support disclosure requirements ($148) = $740. The estimated costs included in section III.B.8 of the Proposing Release inadvertently omitted the costs estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement; however, these costs ($1,464) were discussed in the Paperwork Reduction Act Analysis section of the Proposing Release. Adding these costs ($1,464) to the costs of complying with the proposed amendments to Form N-1A ($740) results in total estimated costs of $2,204. *See* Proposing Release, *supra* note 25, at nn.461, 628, 1214 and accompanying text.

1035 This figure incorporates the costs estimated for a fund to: (i) review and update the disclosure in its registration statement regarding historical occasions on which the fund has considered or imposed liquidity fees or gates, and to inform investors of any fees or gates currently in place by means of a prospectus supplement ($148); and (ii) to review and update the disclosure in its registration statement regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate ($148). *See* Proposing Release, *supra* note 25, at nn.463, 628 and accompanying text.

pursuant to rule 2a-7(c)(2)(iii) would be $148.[1036]

Under the floating NAV alternative, the proposal estimated that the average one-time costs that would be incurred for a floating NAV money market fund to amend its registration statement and update its advertising and sales materials would be $3,092,[1037] and the average one-time costs for a government or retail money market fund would be $2,204.[1038] The proposal also estimated that the average annual costs for a money market fund to amend its registration statement would be $148.[1039]

We requested comment on the estimates of the operational costs associated with the amended disclosure requirements. Certain commenters generally noted that complying with all of the new disclosure requirements, including the disclosure requirements involving the fund's

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1036 This figure reflects the costs estimated for a fund to review and update the disclosure in its registration statement regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate ($148). *See* Proposing Release, *supra* note 25, at n.628 and accompanying text.

1037 This figure incorporates the costs estimated for each fund to comply with the proposed amendments to Form N-1A relating to the floating NAV proposal, as well as the Form N-1A requirements relating to the floating NAV proposal that would not necessitate form amendments ($1,480) + the costs estimated for each fund to comply with the proposed Form N-1A sponsor support disclosure requirements ($148) = $1,628. The estimated costs included in section III.A.8 of the Proposing Release inadvertently omitted the costs estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement; however, these costs ($1,464) were discussed in the Paperwork Reduction Act Analysis section of the Proposing Release. Adding these costs ($1,464) to the costs of complying with the proposed amendments to Form N-1A ($1,628) results in total estimated costs of $3,092. *See* Proposing Release, *supra* note 25, at nn.330, 628, 1121-1125 and accompanying text.

1038 This figure incorporates the costs estimated for each fund to comply with the proposed amendments to Form N-1A relating to the floating NAV proposal, as well as the Form N-1A requirements relating to the floating NAV proposal that would not necessitate form amendments ($592) + the costs estimated for each fund to comply with the proposed Form N-1A sponsor support disclosure requirements ($148) = $740. The estimated costs included in section III.A.8 of the Proposing Release inadvertently omitted the costs estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement; however, these costs ($1,464) were discussed in the Paperwork Reduction Act Analysis section of the Proposing Release. Adding these costs ($1,464) to the costs of complying with the proposed amendments to Form N-1A ($1,628) results in total estimated costs of $2,204. *See* Proposing Release, *supra* note 25, at nn.330, 628, 1121-1125 and accompanying text.

1039 This figure reflects the costs estimated for a fund to review and update the disclosure in its registration statement regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate ($148). *See* Proposing Release, *supra* note 25, at n.628 and accompanying text.

advertisements and sales materials and its registration statement, would involve some additional costs.[1040] Several commenters provided dollar estimates of the initial costs to implement a fees and gates or floating NAV regime and noted that these estimates would include the costs of related disclosure, but these commenters did not specifically break out the disclosure-related costs in their estimates.[1041] One commenter stated that the costs to update a fund's registration statement to reflect the new fees and gates and floating NAV requirements would be "minimal when compared to other costs."[1042] Another commenter stated that it did not consider the disclosure requirements burdensome and noted that it did not believe the disclosure requirements would impose unnecessary costs.[1043] We have considered the comments we received on the new disclosure requirements, and we have determined not to change the assumptions we used in our cost estimates in response to these comments, as the comments provided no specific suggestions or critiques regarding our methods for estimating these costs. However, our current estimates reflect the fact that the amendments we are adopting today combine the floating NAV and fees and gates proposal alternatives into one unified approach, and also incorporate updated industry data.

We anticipate that money market funds will incur costs to (i) amend the fund's advertising and sales materials (including the fund's website) to include the required risk

1040 *See, e.g.,* Fin. Svcs. Roundtable Comment Letter (noting that the proposed disclosure requirements generally would produce "significant cost to the fund and ultimately to the fund's investors"); SSGA Comment Letter (urging the Commission to consider the "substantial administrative, operational, and expense burdens" of the proposed disclosure-related amendments); Chapin Davis Comment Letter (noting that the disclosure- and reporting-related amendments will result in increased costs in the form of fund staff salaries, or consultant, accountant, and lawyer hourly rates, that will ultimately be borne in large part by investors and portfolio issuers).

1041 *See, e.g.,* Chamber I Comment Letter; Fidelity Comment Letter.

1042 *See* State Street Comment Letter, at Appendix A.

1043 *See* HSBC Comment Letter.

disclosure statement; (ii) amend the fund's registration statement to include the required risk disclosure statement, disclosure of the tax consequences and effects on fund operations of a floating NAV (as applicable), and the effects of fees and gates on redemptions (as applicable); (iii) amend the fund's registration statement to disclose post-compliance-period historical occasions on which the fund has considered or imposed liquidity fees or gates; and (iv) amend the fund's registration statement to disclose post-compliance-period historical instances in which the fund has received financial support from a sponsor or fund affiliate. These costs will include initial, one-time costs, as well as ongoing costs. Each money market fund in a fund complex might not incur these costs individually.

We estimate that the average one-time costs for a money market fund (except government money market funds that are not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii), and floating NAV money market funds) to comply with these disclosure requirements would be \$3,059 (plus printing costs).[1044] We estimate that the average one-time costs for a government money market fund that is not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii) to comply with these disclosure requirements would be \$2,102 (plus printing costs).[1045] Finally, we estimate that the average one-time costs for floating NAV

1044 This figure incorporates the costs we estimated for each fund to update its registration statement to include the required disclosure statement, the required disclosure about the effects that fees and gates may have on shareholder redemptions, disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates, and disclosure about financial support received by the fund (\$1,595) + the costs we estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement (\$1,464) = \$3,059. The costs associated with these activities are all paperwork-related costs and are discussed in more detail *infra* at sections IV.F and IV.G.

1045 This figure incorporates the costs we estimated for each fund to update its registration statement to include the required disclosure statement and disclosure about financial support received by the fund (\$638) + the costs we estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement (\$1,464) = \$2,102. The costs associated with these activities are all paperwork-related costs and are discussed in more detail *infra* at sections IV.F and IV.G.

money market funds to comply with these disclosure requirements would be $4,016 (plus printing costs).[1046]

Ongoing compliance costs include the costs for money market funds periodically to: (i) review and update the fund's registration statement disclosure regarding historical occasions on which the fund has considered or imposed liquidity fees or gates (as applicable); (ii) review and update the fund's registration statement disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate; and (iii) inform investors of any fees or gates currently in place (as applicable) or the transition to a floating NAV (as applicable) by means of a prospectus supplement. Because the required registration statement disclosure overlaps with the information that a fund must disclose on Parts C, E, F, and G of Form N-CR, we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear in its registration statement and on its website will largely be incurred when the fund files Form N-CR, as discussed below in section III.F. We estimate that a fund (besides a government money market fund that is not subject to the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii)) will incur average annual costs of $319 to comply with these disclosure requirements.[1047] We also estimate that a government money market fund that is not subject to

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1046 This figure incorporates the costs we estimated for each fund to update its registration statement to include the required disclosure statement, the required disclosure about the effects that fees and gates may have on shareholder redemptions, disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates, the required tax- and operations-related disclosure about a floating NAV, and disclosure about financial support received by the fund ($2,552) + the costs we estimated for each fund to update the fund's advertising and sales materials to include the required risk disclosure statement ($1,464) = $4,016. The costs associated with these activities are all paperwork-related costs and are discussed in more detail *infra* at sections IV.F and IV.G.

1047 This figure incorporates the costs we estimated for each fund to review and update its registration statement disclosure regarding historical occasions on which the fund has considered or imposed liquidity fees or gates, and to inform investors of any fees or gates currently in place (as appropriate) or the transition to a floating NAV (as appropriate) by means of a prospectus supplement ($159.5) + the costs we estimated for the fees and gates requirements pursuant to rule 2a-7(c)(2)(iii) will incur average annual costs of $160 to comply with these disclosure requirements.[1048]

9. *Website Disclosure*

a. Daily Disclosure of Daily and Weekly Liquid Assets

We are adopting, as proposed, amendments to rule 2a-7 that require money market funds to disclose prominently on their websites the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as of the end of each business day during the preceding six months.[1049] The amendments we are adopting would require, as proposed, a fund to maintain a schedule, chart, graph, or other depiction on its website showing historical information about its investments in daily liquid assets and weekly liquid assets for the previous six months,[1050] and would require the fund to update this historical information each business day, as of the end of the preceding business day. Several commenters supported the disclosure on a fund's website of the fund's daily liquid assets and weekly liquid assets.[1051] Commenters

each fund to review and update its registration statement disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate ($159.5) = $319. The costs associated with these activities are all paperwork-related costs and are discussed in more detail *infra* at section IV.G.

1048 This figure incorporates the costs we estimated for each fund to review and update its registration statement disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate (approximately $160). The costs associated with these activities are all paperwork-related costs and are discussed in more detail *infra* at section IV.G.

1049 *See* rule 2a-7(a)(4). As proposed, a "business day," defined in rule 2a-7 as "any day, other than Saturday, Sunday, or any customary business holiday," would end after 11:59 p.m. on that day.

1050 For purposes of the required website disclosure of daily and weekly liquid assets, the six-month look-back period for disclosure would encompass fund data that occurs prior to the compliance date. Accordingly, if a fund were to update its website on the compliance date to include the required schedule, chart, graph, or other depiction showing historical data for the previous six months, the depiction would show data from six months prior to the compliance date. *See infra* note 2201.

1051 *See, e.g.*, Boston Federal Reserve Comment Letter; Oppenheimer Comment Letter; Fidelity Comment Letter.

supporting such disclosure noted that daily disclosure of this information would promote transparency and help investors better understand money market fund risks.[1052] A few commenters stated that providing this information could help investors evaluate whether a fund is positioned to meet redemptions or could approach a threshold where a fee or gate could be imposed.[1053] A number of commenters suggested that daily disclosure likely would impose external market discipline on portfolio managers and encourage careful management of daily and weekly assets.[1054] Finally, several commenters indicated that many money market funds are already disclosing such information on either a daily or a weekly basis, a fact we noted in the Proposing Release.[1055]

Other commenters, however, opposed certain aspects of the proposed amendment. Two commenters opposed daily disclosure of this information and thought the information could be provided on a weekly basis.[1056] We disagree. In times of market stress, money market funds may face rapid, heavy redemptions, which could quickly affect their liquidity.[1057] Having daily information in times of market stress can reduce uncertainty, providing investors assurance that a money market fund has sufficient liquidity to withstand the potential for heavy redemptions. One commenter opposed the six-month look-back because it would require a restructuring of fund websites that are already disclosing this data.[1058] We recognize, as discussed below, that the

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1052 *See, e.g.,* Oppenheimer Comment Letter; Blackrock II Comment Letter; Fidelity Comment Letter.

1053 *See,* e.g., U.S. Bancorp Comment Letter; Goldman Sachs Comment Letter.

1054 *See, e.g.,* ICI Comment Letter; Dreyfus Comment Letter; American Bankers Ass'n Comment Letter.

1055 *See, e.g.,* U.S. Bancorp Comment Letter; Blackrock II Comment Letter; J.P. Morgan Comment Letter.

1056 *See* Schwab Comment Letter; Federated VIII Comment Letter.

1057 *See generally* DERA Study, *supra* note 24, at section 3.

1058 *See* UBS Comment Letter.

amendments will impose costs on funds. We believe, however, that it is important for funds to provide historical information for the prior six months, and updating such information daily will help investors place current information in context and thus have a more complete picture of current events.

One commenter argued that daily disclosure of this information would not be meaningful to investors,[1059] while another commenter expressed concern that daily disclosure, in combination with discretionary fees and gates, could cause reactionary redemptions.[1060] We recognize and have considered the risk that daily disclosure of weekly liquid assets and daily liquid assets could trigger heavy redemptions in some situations, particularly the risk of pre-emptive redemptions in anticipation of a potential fee or gate. However, as discussed in detail above, the board's discretion to impose a fee or a gate, among other things, mitigates the concern that investors will be able to accurately predict such an event which in turn would lead them to pre-emptively withdraw their assets from the fund.[1061] In addition, as discussed above, other aspects of today's amendments further mitigate the risks of pre-emptive runs. We believe that daily disclosure of weekly liquid assets and daily liquid assets ultimately benefits investors and could both increase stability and decrease risk in the financial markets.[1062] As mentioned above, while there is a potential for heavy redemptions in response to a decrease in liquidity, the increased transparency could reduce run risk in cases where it shows investors that a fund has sufficient liquidity to

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1059 *See* Schwab Comment Letter.

1060 *See* Federated VIII Comment Letter; *see also supra* section III.A.1.c.i.

1061 *See supra* note 171 and accompanying text.

1062 Although not a principal basis for our decision, we note that certain literature suggests that suspensions of withdrawals can prevent bank runs. *See, e.g.*, Diamond, Douglas W., Spring 2007, "Banks and Liquidity Creation: A Simple Exposition of the Diamond-Dybvig Model," Economic Quarterly, Volume 93, Number 2, 189-200.

withstand market stress events. We also agree with commenters and believe that daily disclosure will increase market discipline, which could ultimately deter situations that could lead to heavy redemptions.[1063] Also, as noted elsewhere in this Release, we believe that the reforms we are adopting concerning fees and gates are a tool for handling heavy redemptions once they occur. Finally, we note that several funds have already voluntarily begun disclosing liquidity information on their websites.[1064]

A few commenters also believed that the proposed disclosures should apply only to stable NAV funds.[1065] We disagree with these commenters. We believe that the benefits we discuss throughout this section regarding disclosure apply regardless of whether a fund has a stable or floating NAV. As we have noted in several instances, a floating NAV may reduce but does not eliminate the risk of heavy redemptions if the fund comes under stress. Liquidity information can help investors understand a fund's ability to withstand heavy redemptions. Additionally, this information is relevant to investors to understand the potential for either a floating NAV fund or a stable NAV fund to impose a fee or a gate. We also believe that it is important for all money market funds, both floating NAV funds and stable NAV funds, to disclose liquidity information so that investors will easily be able to compare this data point, which could be seen as a risk metric, across funds when making investment decisions among types of money market funds (*e.g.*, comparing an institutional prime money market fund to a government money market fund), as well as between money market funds of the same type (*e.g.*, comparing two government money market funds).

1063 *See supra* note 1054.

1064 *See, e.g.*, BlackRock II Comment Letter; Boston Federal Reserve Comment Letter.

1065 *See, e.g.*, Legg Mason & Western Asset Comment Letter; ICI Comment Letter; IDC Comment Letter.

We continue to believe that daily website disclosure of a fund's daily liquid assets and weekly liquid assets will increase transparency and enhance investors' understanding of money market fund risks. This disclosure will help investors understand how funds are managed, as well as help them monitor, in near real-time, a fund's ability to satisfy redemptions in various market conditions, including episodes of market turbulence. We also agree with commenters and believe that this disclosure will encourage market discipline on fund managers.[1066] In particular, we believe that this disclosure will encourage fund managers to manage the fund's liquidity in a manner that makes it less likely that the fund crosses a threshold where a fee or gate could be imposed, and also discourage month-end "window dressing" (in this context, the practice of periodically increasing the daily liquid assets and/or weekly liquid assets in a fund's portfolio, such that the fund's month-end reporting will reflect certain liquidity levels, and then decreasing the fund's investment in such assets shortly after the fund's month-end reporting calculations have been made).

b. Daily Disclosure of Net Shareholder Flows

We are also adopting, as proposed, amendments to rule 2a-7 that require money market funds to disclose prominently on their websites the fund's daily net inflows or outflows, as of the end of the previous business day, during the preceding six months.[1067] As proposed, the amendments we are adopting would require a fund to maintain a schedule, chart, graph, or other depiction on its website showing historical information about its net inflows or outflows for the

[1066] *See supra* note 1054.

[1067] *See* rule 2a-7(h)(10)(ii); *see also supra* note 1049.

previous six months,[1068] and would require the fund to update this historical information each business day, as of the end of the preceding business day. One commenter expressed support for daily disclosure of a fund's net inflows and outflows, though it opposed the requirement to report and continually update historical information.[1069] Several commenters objected to website disclosure of net shareholder flows, noting that money market funds often have large inflows and outflows as a normal course of business, and these flows are often anticipated.[1070] A number of commenters suggested that shareholders could misinterpret large inflows and outflows as a sign of stress even if the flows are anticipated and the fund's liquidity is adequate to handle them.[1071] Two commenters also expressed concern that a large net inflow or outflow could signal to the market that the money market fund would need to buy or sell securities in the market, potentially facilitating front running.[1072]

We continue to believe that daily disclosure of net inflows or outflows will provide beneficial information to shareholders, and thus we are adopting this requirement as proposed. In our view, information on shareholder redemptions can help provide important context to data regarding the funds' liquidity, as a fund that is experiencing increased outflow volatility will require greater liquidity. We understand, as commenters pointed out, that many funds can experience periodic and expected large net inflows or outflows on a regular basis. We believe

1068 For purposes of the required website disclosure of net fund inflows or outflows, the six-month look-back period for disclosure would encompass fund data that occurs prior to the compliance date. *See supra* note 1050.

1069 *See* UBS Comment Letter.

1070 *See* Federated VIII Comment Letter; Vanguard Comment Letter; U.S. Bancorp Comment Letter; Legg Mason & Western Asset Comment Letter; IDC Comment Letter.

1071 *See* U.S. Bancorp Comment Letter; Blackrock II Comment Letter; Dreyfus Comment Letter.

1072 *See* ICI Comment Letter; Legg Mason & Western Asset Comment Letter.

that disclosure of this information over a rolling six-month period, however, will mitigate the risk that investors will misinterpret this information. Information about the historical context of fund inflows and outflows, which funds can include on their websites, should help investors distinguish between periodic large outflows that can occur in the normal course from periods of increased volatility in shareholder flow. Finally, we are not persuaded by commenters who suggested that information regarding net shareholder flows will promote front-running because we believe that front-running concerns are not especially significant for money market funds on account of the specific characteristics of these funds and their holdings.[1073]

c. Daily Disclosure of Current NAV

We are adopting, as proposed, amendments to rule 2a-7 that would require each money market fund to disclose daily, prominently on its website, the fund's current NAV per share (calculated based on current market factors), rounded to the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price[1074] (the fund's "current NAV") as of the end of the previous business day during the preceding six months.[1075] The amendments require a fund to maintain a schedule, chart, graph, or other depiction on its website showing historical information about its daily current NAV per

1073 *See, e.g.*, INVESTMENT COMPANY INSTITUTE, REPORT OF THE MONEY MARKET WORKING GROUP, at 93 (Mar. 17, 2009), *available at* http://www.ici.org/pdf/ppr_09_mmwg.pdf ("Because of the specific characteristics of money market funds and their holdings ... the frontrunning concerns are far less significant for this type of fund. For example, money market funds' holdings are by definition very short-term in nature and therefore would not lend themselves to frontrunning by those who may want to profit by trading in a money market fund's particular holdings. Rule 2a-7 also restricts the universe of Eligible Securities to such an extent that front running, to the extent it exists at all, tends to be immaterial to money market fund performance.").

1074 *E.g.*, $10,000 or $100.00 per share.

1075 *See* rule 2a-7(h)(10)(iii).

share for the previous six months,[1076] and would require the fund to update this historical information each business day as of the end of the preceding business day.[1077] These amendments complement the current requirement for a money market fund to disclose its shadow price monthly on Form N-MFP (broken out weekly).[1078] Disclosing the NAV per share to the fourth decimal would conform to the precision of NAV reporting that funds will be required to report on Form N-MFP and to what many funds are currently voluntarily disclosing.[1079]

Several commenters supported the proposed disclosure requirement of funds' current NAV per share. These commenters suggested that daily disclosure of the current NAV per share would increase transparency and investor understanding of money market funds.[1080] One commenter noted that the disclosure could impose discipline on portfolio managers, preventing, for example, month-end "window dressing."[1081] Finally, as we noted in the Proposing Release, several commenters indicated that many money market funds are already disclosing such information on either a daily or a weekly basis.[1082]

Some commenters opposed certain aspects or questioned the usefulness of the proposed

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1076 For purposes of the required website disclosure of the fund's current NAV per share, the six-month look-back period for disclosure would encompass fund data that occurs prior to the compliance date. *See supra* note 1050.

1077 *See supra* note 1049.

1078 *See infra* section III.G.1.b.

1079 *See infra* note 1087 and accompanying text.

1080 *See, e.g.*, MFDF Comment Letter; Blackrock II Comment Letter.

1081 *See* J.P. Morgan Comment Letter.

1082 *See, e.g.*, U.S. Bancorp Comment Letter; Blackrock II Comment Letter; J.P. Morgan Comment Letter. *But see* Federated VIII Comment Letter (noting that it has not received many "hits" on its website after it began voluntarily posting information about the current market-based NAV per share of its funds, suggesting that allowing market forces to determine when such disclosure is valuable to investors is preferable to a "one size fits all" regulation).

disclosure requirement. One commenter believed that frequent publication of a fund's current NAV per share would increase the risk of heavy redemptions for stable NAV funds during a period of market stress, noting the incentive for investors to redeem if they see the shadow price fall.[1083] We recognize and have considered the risk that daily disclosure of the current NAV per share could encourage heavy redemptions when it declines. We believe, however, that daily disclosure will not lead to significant redemptions and could, as we describe below, both increase stability and decrease risk in the financial markets.[1084] In particular, we believe that greater transparency regarding the current and historical NAV per share could help investors better assess the effects of market events on a fund's NAV and understand the context of a fund's principal stability during particular market stresses. For example, if an investor believes the values of one or more securities held by a fund are impaired, but does not see that impairment reflected in the NAV because it is only required to be disclosed once a month, they may sell their shares in the funds even though there is no actual impairment. Lack of transparency was one of the reasons cited in the DERA Study as a possible explanation for the large redemption activity during the financial crisis.[1085] As one commenter noted, such disclosure could allay concerns about how a money market fund might be affected by the occurrence of negative market events.[1086] We also believe that daily disclosure will increase market discipline, which could ultimately deter heavy redemptions. Also, as noted elsewhere in this Release, we believe that the

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1083 *See* HSBC Comment Letter.

1084 For a discussion of how disclosure of a fund's daily liquid assets and weekly liquid assets could similarly increase stability and decrease risk in the financial markets, *see supra* notes 1062-1064 and accompanying text.

1085 *See* DERA Study, *supra* note 24.

1086 *See* Goldman Sachs Comment Letter.

reforms we are adopting concerning fees and gates are a tool for handling heavy redemptions when they occur. Finally, we note that many funds have voluntarily begun disclosing information about their current market-based NAV per share on their websites, and such disclosures have not led to significant redemptions.[1087]

As with the proposed requirement regarding daily disclosure of liquidity levels, several commenters supported daily disclosure of a fund's current NAV per share only for stable NAV funds.[1088] We disagree with commenters who suggested that daily website disclosure of the current NAV per share would only be useful for shareholders of stable NAV funds. We believe that the benefits we discuss above regarding disclosure apply regardless of whether a fund has a stable or floating NAV. For example, we believe that it is important for all money market funds, both floating NAV funds and stable NAV funds, to disclose NAV information so that investors will easily be able to compare this data point, which could be seen as a risk metric, across funds when making investment decisions among types of money market funds (*e.g.*, comparing an institutional prime money market fund to a government money market fund), as well as between money market funds of the same type (*e.g.*, comparing two institutional prime money market funds). The disclosure of the current NAV per share will enhance investors' understanding of money market funds and their inherent risks and allow investors to invest according to their risk preferences. This information will make changes in a money market fund's market-based NAV a regularly observable occurrence, which could promote investor confidence and generally

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1087 A number of large fund complexes have begun (or plan) to disclose daily money market fund market valuations (*i.e.*, shadow prices), including BlackRock, Charles Schwab, Federated Investors, Fidelity Investments, Goldman Sachs, J.P. Morgan, Reich & Tang, and State Street Global Advisors. *See, e.g.*, *Money Funds' New Openness Unlikely to Stop Regulation*, WALL ST. J. (Jan. 30, 2013).

1088 *See, e.g.*, Legg Mason & Western Asset Comment Letter; ICI Comment Letter; IDC Comment Letter.

provide investors with a greater understanding of the money market funds in which they invest.[1089] We note that this disclosure could make floating NAV money market funds appear to be volatile compared to alternatives like ultra-short bond funds, which are registered mutual funds that transact at three decimal places (and disclosure of these alternative funds' NAV per share, consequently, would likewise show three and not four decimal places).[1090] It is possible that investors might be incentivized to move their money to these alternatives because they appear more stable than money market funds.[1091]

The Commission continues to believe that requiring each fund to disclose daily its current NAV per share and also to provide six months of historical information about its current NAV per share will increase money market funds' transparency and permit investors to better understand money market funds' risks. This information will permit shareholders to reference funds' current NAV per share in near real time to assess the effect of market events on funds' portfolios, and will also provide investors the ability to discern trends through the provision of the six months of historical data.[1092] While some historical data regarding the current NAV per

1089 *See* J.P. Morgan Comment Letter; BlackRock II Comment Letter.

1090 *But see supra* note 521 and accompanying text (discussing staff analysis showing that, historically, over a twelve-month period, 100% of ultra-short bond funds have fluctuated in price (using 10 basis point rounding), compared with 53% of money market funds that have fluctuated in price (using basis point rounding)).

1091 *See infra* section III.K, for an in-depth discussion about the macroeconomic consequences of the amendments, including the extent to which the requirements for institutional prime funds to transact at prices rounded to the fourth decimal place (and also, like all money market funds, disclose their current NAV to the fourth decimal place each day) could cause investors to reallocate their investments to alternatives outside the money market fund industry.

1092 One commenter opposed the disclosure of six months of historical information about a fund's current NAV per share because it would require a restructuring of fund websites that are already disclosing data. *See* UBS Comment Letter. We estimate the costs of modifications to fund websites in the Economic Analysis section *infra*.

share will be available through monthly N-MFP filings,[1093] we believe that requiring funds to place this data on the fund's website will allow investors to consider this information in a more convenient and accessible format. In addition to increasing investors' understanding of money market funds' risks, we believe that this disclosure will encourage market discipline on fund managers, and particularly discourage month-end "window dressing."

d. Daily Calculation of Current NAV per Share for Stable Value Money Market Funds

We are adopting, generally as proposed, amendments to rule 2a-7 that would require stable value money market funds to calculate the fund's current NAV per share (which the fund must calculate based on current market factors before applying the amortized cost or penny-rounding method, if used), rounded to the fourth decimal place in the case of funds with a \$1.0000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.*, \$10.000 per share) as of the end of each business day.[1094] Rule 2a-7 currently requires money

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1093 *See infra* note 1179 and accompanying text (discussing our expectation that money market funds will be able generally to use the same software or service providers to calculate the fund's current NAV per share daily that they presently use to prepare and file Form N-MFP).

1094 *See* rule 2a-7(h)(10)(iii); *see also* text accompanying *supra* note 1074 for definition of "current NAV." Under rule 2a-7 as amended, a floating NAV money market fund is required, like any mutual fund not regulated under rule 2a-7, to price its securities at the current NAV by valuing its portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the fund's board of directors. *See* rule 2a-7(c)(1); section 2(a)(41)(B); rules 2a-4 and 22c-1; *see also supra* note 5 and accompanying text. In addition, under rule 2a-7 as amended, a floating NAV money market fund is required to compute its price per share for purposes of distribution, redemption, and repurchase by rounding the fund's current NAV per share to a minimum of the fourth decimal place in the case of a fund with a \$1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (*e.g.*, \$10.000 per share, or \$100.00 per share). *See* rule 2a-7(c)(1)(ii). Therefore, we did not propose amendments to rule 2a-7 that would specifically require floating NAV money market funds to calculate their current NAV per share daily, because these funds already would be required to calculate their current NAV in order to price and sell their securities each day. As proposed, rule 2a-7 as amended would have permitted stable value funds to compute their current price per share, for purposes of distribution, redemption, and repurchase, by use of the penny-rounding method but not the amortized cost method. *See* Proposing Release, *supra* note 25, at n.170. Therefore, the proposed daily current NAV calculation requirement would have specified that stable value funds calculate their current NAV per share based on current market factors before applying the penny rounding method. As adopted, rule 2a-7 permits market funds to calculate the fund's NAV per share, using available market quotations (or an appropriate substitute that reflects current market conditions), at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions.[1095] We believe that daily disclosure of money market funds' current NAV per share would increase money market funds' transparency and permit investors to better understand money market funds' risks, and thus we are adopting amendments to rule 2a-7 that would require this disclosure.[1096] Because we are requiring money market funds to disclose their current NAV daily on the fund website, we correspondingly are amending rule 2a-7 to require funds to make this calculation as of the end of each business day, rather than at the board's discretion. We received no comments on this calculation requirement separate from comments on the related current NAV disclosure requirement. As discussed above, many money market funds already calculate and disclose their current NAV on a daily basis, and thus we do not expect that requiring all money market funds to perform a daily calculation should entail significant additional costs.[1097]

e. Harmonization of Rule 2a-7 and Form N-MFP Portfolio Holdings Disclosure Requirements

Money market funds are currently required to file information about the fund's portfolio holdings on Form N-MFP within five business days after the end of each month, and to disclose

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stable value funds to compute their current price per share, for purposes of distribution, redemption, and repurchase, by use of the amortized cost method and/or the penny rounding method. *See* rule 2a-7(c)(1)(i). Therefore, the daily calculation requirement we are adopting, as discussed in this section III.E.9.d, specifies that stable value funds calculate their current NAV per share based on current market factors before applying the amortized cost or penny-rounding method. *See* rule 2a-7(c)(1)(i).

1095 Current rule 2a-7(c)(1). As adopted today, Items A.20 and B.5 of Form N-MFP will require money market funds to provide NAV data as of the close of business on each Friday during the month reported.

1096 *See supra* section III.E.9.c.

1097 *See supra* note 1082 and accompanying text. The costs for those funds that do not already calculate and disclose their market-based NAV on a daily basis are discussed in detail below. *See infra* note 1179 and accompanying text.

much of the portfolio holdings information that Form N-MFP requires on the fund's website each month with 60-day delay. We are adopting amendments to rule 2a-7 in order to harmonize the specific portfolio holdings information that rule 2a-7 currently requires funds to disclose on the fund's website with the corresponding portfolio holdings information required to be reported on Form N-MFP pursuant to amendments to Form N-MFP, with changes to conform to modifications we are making to Form N-MFP from the proposal. We believe that these amendments will benefit money market fund investors by providing additional, and more precise, information about portfolio holdings, which should allow investors to better evaluate the current risks of the fund's portfolio investments.

Specifically, in a change from the proposal, we are adopting amendments to the categories of portfolio investments reported on Form N-MFP, and are therefore also adopting conforming amendments to the categories of portfolio investments currently required to be reported on a money market fund's website.[1098] We are adopting, as proposed, an amendment to Form N-MFP that would require funds to report the maturity date for each portfolio security using the maturity date used to calculate the dollar-weighted average life maturity, and therefore we are also adopting, as proposed, conforming amendments to the current website disclosure requirements regarding portfolio securities' maturity dates.[1099] Currently, we do not require funds to disclose the market-based value of portfolio securities on the fund's website, because doing so would disclose this information prior to the time the information becomes public on Form N-MFP (because of the current 60-day delay before Form N-MFP information becomes

1098 *See* rule 2a-7(h)(10)(i)(B); Form N-MFP, Item C.6.

1099 *See* rule 2a-7(h)(10)(i)(B); Form N-MFP, Item C.12.

publicly available). Because we are removing this 60-day delay, we are also requiring funds to make the market-based value of their portfolio securities available on the fund website at the same time that this information becomes public on Form N-MFP.[1100] One commenter supported the proposed amendments to harmonize portfolio information on Form N-MFP and information that funds disclose on their websites.[1101]

The information that money market funds currently are required to disclose about the fund's portfolio holdings on the fund's website includes, with respect to each security held by the money market fund, the security's amortized cost value.[1102] As part of the reforms to rule 2a-7, we proposed to eliminate the use of the amortized cost valuation method for stable value money market funds, and to correspond with that elimination, we also proposed to remove references to amortized cost from Form N-MFP.[1103] To harmonize the website disclosure of funds' portfolio holdings with these changes to Form N-MFP, we additionally proposed amendments to the current requirement for funds to disclose the amortized cost value of each portfolio security; instead, funds would be required to disclose the "value" of each portfolio security.[1104] As discussed previously in section III.B.5, the final amendments will permit the continued use of the amortized cost valuation method for stable value money market funds, and therefore to conform the changes to Form N-MFP to the final amendments to rule 2a-7, we are not adopting certain proposed Form N-MFP amendments that would have removed references to the amortized cost

1100 *See* rule 2a-7(h)(10)(i)(B).

1101 *See* ICI Comment Letter.

1102 *See* current rule 2a-7(c)(12)(ii)(H).

1103 *See* Proposing Release, *supra* note 25, at section III.H.

1104 *See id.*

of securities in certain existing items.[1105] However, as proposed, we are amending Items 13 and 41 of Form N-MFP by replacing amortized cost with "value" as defined in section 2(a)(41) of the Act (generally the market-based value but can also be the amortized cost value, as appropriate),[1106] and therefore we are also adopting, as proposed, the requirement for funds to disclose the "value" (and not specifically the amortized cost value) of each portfolio security on the fund's website. Because the new information that a fund will be required to present on its website overlaps with the information that a fund will be required to disclose on Form N-MFP, we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear on its website will largely be incurred when the fund files Form N-MFP, as discussed below in section III.G.[1107]

f. Disclosure of the Imposition of Liquidity Fees and Gates

We are adopting, largely as proposed, an amendment to rule 2a-7 that requires a fund to post prominently on its website certain information that the fund is required to report to the Commission on Form N-CR[1108] regarding the imposition of liquidity fees, temporary suspension of fund redemptions, and the removal of liquidity fees and/or resumption of fund redemptions.[1109]

1105 *See infra* section III.G.1.a.

1106 *See infra* note 1446 and accompanying text.

1107 This disclosure may largely duplicate the Form N-MFP filing, but merely providing a link to the EDGAR N-MFP filing of this data would not suffice to meet this requirement. We understand that investors have, in past years, become accustomed to obtaining money market fund information on funds' websites (*see infra* note 1123 and accompanying text), and providing the disclosure directly on a fund's website would permit these investors to view this information in conjunction with other required website disclosure about the fund's liquidity and current net asset value (*see* rule 2a-7(h)(10)(ii) and (iii)) without the need to independently locate and consolidate the information provided by this disclosure.

1108 *See infra* section III.F.

1109 *See* rule 2a-7(h)(10)(v); Form N-CR Parts E, F, and G; *see also infra* section III.F (discussing Form N-CR requirements). With respect to the events specified in Part E of Form N-CR (imposition of a liquidity fee) and Part F of Form N-CR (suspension of fund redemptions), a fund is required to post on its website only

The amendment requires a fund to include this website disclosure on the same business day as the fund files an initial report with the Commission in response to any of the events specified in Parts E, F, and G of Form N-CR,[1110] and, with respect to any such event, to maintain this disclosure on its website for a period of not less than one year following the date on which the fund filed Form N-CR concerning the event.[1111] This amendment requires a fund only to present certain summary information about the imposition of fees and gates on its website,[1112] whereas the fund will be required to present more detailed discussion solely on Form N-CR.[1113] The website disclosure requirements we are adopting regarding the imposition of fees and gates are similar to the proposed requirements in that they, like the proposed requirements, require a fund to post on its website only that information about the imposition of fees and gates that the fund is required to disclose in an initial report on Form N-CR.[1114] In addition, the amendments to rule

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the preliminary information required to be filed on Form N-CR on the first business day following the triggering event. *See* Instructions to Form N-CR Parts E and F. A link to the EDGAR N-CR filing would not suffice to meet this requirement. We understand that investors have, in past years, become accustomed to obtaining money market fund information on funds' websites (*see infra* note 1123 and accompanying text), and providing the disclosure directly on a fund's website would permit these investors to view this information in conjunction with other required website disclosure about the fund's liquidity and current net asset value (*see* rule 2a-7(h)(10)(ii) and (iii)) without the need to independently locate and consolidate the information provided by this disclosure.

1110 A fund must file an initial report on Form N-CR in response to any of the events specified in Parts E, F, or G (generally, the imposition or lifting of liquidity fees or gates) within one business day after the occurrence of any such event. A fund need not post on its website the additional information required in the follow-up Form N-CR filing 4 business days after the event, if such a filing is required. For additional discussion of the filing requirements provided in Parts E, F, and G of Form N-CR, *see infra* section III.F.5.

1111 *See* rule 2a-7(h)(10)(v).

1112 A fund also will be required to present summary information about the historical imposition of fees and/or gates in the fund's SAI. *See supra* section III.E.5.

1113 *See infra* section III.F.5.

1114 As discussed below, we have made changes to the proposed requirements of Form N-CR, and the information that a fund will be required to file on Parts E, F, and G of Form N-CR is therefore different than that which was proposed. *See infra* section III.F.5. The information a fund is required to post on its website mirrors certain of the information that the fund is required to disclose on Form N-CR. To the extent Form N-CR disclosure requirements that we are adopting have been modified from the proposed

2a-7 that we are adopting also require a fund to include the following statement as part of its website disclosure: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."[1115]

One commenter stated that it supported the proposed requirement that money market funds should post on their websites certain of the information required by Form N-CR, noting that although Form N-CR is publicly available upon filing with the SEC, investors will more readily find and make use of this information if posted on a particular funds' website.[1116] Another commenter, however, argued that the proposed website disclosure (and proposed Form N-CR) filings are redundant and that it would be challenging to comply with a one-day time frame, and also argued that the registration statement and website disclosure to investors should take priority over the Form N-CR filing.[1117] One commenter also supported a requirement for a money market fund to notify shareholders individually in order to allow a money market fund to apply a fee or gate.[1118]

As discussed below, we continue to believe that certain information required to be disclosed on Form N-CR must be filed with the Commission within one business day and that

requirements, the website disclosure requirements have also been modified.

1115 *See* rule 2a-7(h)(10)(v).

1116 *See* CFA Institute Comment Letter.

1117 *See* Dreyfus Comment Letter; *see also infra* notes 1308 and 1309 and accompanying text.

1118 *See* HSBC Comment Letter. We are not imposing such an individual shareholder notification requirement because we believe the costs of such notification may be extremely high, the notification process might take significant time, and shareholders should be able to get effective notice on a fund's website.

this information should also be posted on the fund's website within the same time-frame to help ensure that the Commission, investors generally, shareholders in each particular fund, and other market observers are all provided with these critical alerts as quickly as possible.[1119] Because we believe that these different parties all have a significant interest in receiving this information very quickly, we do not agree with the commenter who argued that website and registration disclosure should take priority over the Form N-CR filing.[1120] We believe that it is important for a money market fund that may impose fees and gates to inform existing and prospective shareholders on its website when: (i) the fund's weekly liquid assets fall below 10% of its total assets; (ii) the fund's weekly liquid assets fall below 30% of its total assets and the board of directors imposes a liquidity fee pursuant to rule 2a-7; (iii) the fund's board of directors temporarily suspends the fund's redemptions pursuant to rule 2a-7; or (iv) a liquidity fee has been removed or fund redemptions have been resumed. This information is particularly meaningful for shareholders to receive, as it could influence prospective shareholders' decision to purchase shares of the fund, as well as current shareholders' decision or ability to sell fund shares. We also note, as discussed in more detail in the Paperwork Reduction Act analysis section below,[1121] that we believe the burdens a fund would incur to draft and finalize the disclosure that would appear on its website would largely be incurred when the fund files Form N-CR, and therefore we do not believe that the one-day time-frame for updating the disclosure on the fund's website should be overly burdensome.

1119 *See infra* section III.F.7.

1120 *See id.*; *see also* text following this note 1120 (discussing website disclosure of fees and gates); *infra* notes 1124–1127 (discussing prospectus supplements informing money market fund investors of the imposition of a fee or gate).

1121 *See infra* section IV.A.6.d.

We maintain our belief that website disclosure provides important transparency to shareholders regarding occasions on which a particular fund's weekly liquid assets have dropped below certain thresholds, or a fund has imposed or removed a liquidity fee or gate, because many investors currently obtain important fund information on the fund's website.[1122] We understand that investors have become accustomed to obtaining money market fund information on funds' websites, and therefore we believe that website disclosure provides significant informational accessibility to shareholders and the format and timing of this disclosure serves a different purpose than the Form N-CR filing requirement.[1123] While we believe that it is important to have a uniform, central place for investors to access the required disclosure, we note that nothing in these amendments would prevent a fund from supplementing its Form N-CR filing and website posting with complementary shareholder communications, such as a press release or social media update disclosing a fee or gate imposed by the fund.

We believe that the one-year minimum time frame for website disclosure is appropriate because this time frame would effectively oblige a fund to post the required information in the interim period until the fund files an annual post-effective amendment updating its registration statement, which would incorporate the same information.[1124] Although a fund may inform

1122 For example, fund investors may access the fund's proxy voting guidelines, and proxy vote report, as well as the fund's prospectus, SAI, and shareholder reports if the fund uses a summary prospectus, on the fund website.

1123 *See, e.g.*, 2010 Adopting Release, *supra* note 16 (adopting amendments to rule 2a-7 requiring money market funds to disclose information about their portfolio holdings each month on their websites); Comment Letter of the Securities Industry and Financial Markets Association (Jan. 14, 2013) (available in File No. FSOC–2012–0003) (noting that some industry participants now post on their websites portfolio holdings-related information beyond that which is required by the money market reforms adopted by the Commission in 2010, as well as daily disclosure of market value per share); *see also infra* note 1454 (discussing recent decisions by a number of money market fund firms to begin reporting funds' daily shadow prices on the fund website).

1124 *See supra* notes 960-961 and accompanying text.

prospective investors of any redemption fee or gate currently in place by means of a prospectus supplement,[1125] the prospectus supplement would not inform prospective and current shareholders of any fees or gates that were imposed, and then were removed, during the previous 12 months.

In addition, a fund currently must update its registration statement to reflect any material changes by means of a post-effective amendment or a prospectus supplement (or "sticker") pursuant to rule 497 under the Securities Act. In order to meet this requirement, and as discussed in the Proposing Release,[1126] a money market fund that imposes a redemption fee or gate should consider informing prospective investors of any fees or gates currently in place by means of a prospectus supplement.[1127]

g. Disclosure of Sponsor Support

We are also amending rule 2a-7 to require that a fund post prominently on its website substantially the same information that the fund is required to report to the Commission on Form N-CR regarding the provision of financial support to the fund.[1128] The amendments that we are adopting reflect certain modifications from the proposal to address commenter concerns. Specifically, the proposal would have required a fund to post on its website substantially the same information that the fund is required to report to the Commission on Form N-CR regarding the provision of financial support to the fund. As discussed in more detail below, we are adopting amendments to rule 2a-7 that would require a fund to post on its website only a subset

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1125 *See infra* notes 1126-1127 and accompanying text.

1126 *See* Proposing Release, *supra* note 25, at section III.B.8.c.

1127 We expect that this supplement would include revisions to the disclosure in the registration statement concerning restrictions on fund redemptions. *See supra* section III.E.4. The costs of filing such a supplement are discussed in section III.E.8, *supra*.

1128 *See* rule 2a-7(h)(10)(v); Form N-CR Part C; *see also infra* section III.F.3 (discussing the Form N-CR requirements).

of this information.[1129] In addition, the amendments would require a fund to include the following statement as part of its website disclosure: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."[1130] A fund would be required to maintain this disclosure on its website for a period of not less than one year following the date on which the fund filed Form N-CR.[1131]

For the reasons discussed in the Proposing Release and below, we believe it is important for money market funds to inform existing and prospective shareholders of any present occasion on which the fund receives financial support from a sponsor or other fund affiliate.[1132] In particular, we believe this disclosure could influence prospective shareholders' decision to purchase shares of the fund and could inform shareholders' assessment of the ongoing risks associated with an investment in the fund. While commenters also raised concerns about the potential redundancy of the proposed registration statement, website, and Form N-CR disclosure requirements,[1133] we believe that website disclosure provides significant informational accessibility to shareholders and that format and timing of this disclosure serves a different purpose than the Form N-CR filing requirement.[1134]

1129 *See* rule 2a-7(h)(10)(v).

1130 *See id.*

1131 *See id.*

1132 *See* Proposing Release, *supra* note 25, at text in paragraph prior to note 620; *see also infra* section III.F.3.

1133 *See, e.g.,* Dreyfus Comment Letter; SIFMA Comment Letter.

1134 *See supra* notes 1122 and 1123.

However, in response to commenter concerns about potentially duplicative disclosure requirements, we have modified the proposed disclosure requirements and are adopting amendments to rule 2a-7 that would require a fund to post on its website only a subset of the information that the fund is required to file on Form N-CR. A fund will only be required to present certain summary information about the receipt of financial support on its website (as well as in the fund's SAI[1135]), and will be required to present more detailed discussion solely on Form N-CR.[1136] Specifically, a fund will be required to disclose on its website only that information that the fund is required to file on Form N-CR within one business day after the occurrence of any one or more of the events specified in Part C of Form N-CR ("Provision of Financial Support to Fund").[1137] A fund thus will not be required, as proposed, to disclose the reason for support, term of support, and any contractual restrictions relating to support on its website, although a fund will be required to disclose this information on Form N-CR.[1138] We believe that the disclosure requirements we are adopting appropriately consider commenters' concerns about duplicative disclosure as well as our interest in requiring funds to disclose the primary information about affiliate financial support that we believe shareholders may find useful in assessing fund risks and determining whether to purchase fund shares. We also address general commenter concerns[1139] about the possible duplicative effects of the concurrent website and Form N-CR disclosures in section III.F.3 below, where we discuss how Form N-CR and website

1135 *See supra* section III.E.7.

1136 *See infra* section III.F.3 (Concerns of Potential Redundancy).

1137 *See* rule 2a-7(h)(10)(v).

1138 *See id.*; Form N-CR Part C.

1139 *See, e.g.*, Dreyfus Comment Letter.

disclosure serve different purposes.[1140]

As proposed, we are requiring the website disclosure to be posted for a period of not less than one year following the date on which the fund filed Form N-CR concerning the event.[1141] As we stated in the Proposing Release, we believe that the one-year minimum time frame for website disclosure is appropriate because this time frame would effectively oblige a fund to post the required information in the interim period until the fund files an annual post-effective amendment updating its registration statement, which would incorporate the same information.[1142] We received no comments on this requirement, and we are adopting it as proposed.

h. Economic Analysis

As discussed above, and in our proposal, we are adopting a number of amendments to rule 2a-7 to amend a number of requirements that money market funds post certain information to funds' websites. These amendments require disclosure of information about money market funds' liquidity levels, shareholder flows, market-based NAV per share (rounded to four decimal places), and the use of affiliate financial support.[1143] The qualitative benefits and costs of these requirements are discussed above. These amendments should improve transparency and better

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1140 *See infra* section III.F.3 (Concerns over Potential Redundancy).

1141 *See* rule 2a-7(h)(10)(v).

1142 *See supra* notes 1126-1127 and accompanying text. Of course, in the event that the fund files a post-effective amendment within one year following the provision of financial support to the fund, information about the financial support would appear both in the fund's registration statement and on the fund's website for the remainder of the year following the provision of support.

1143 We believe that the effects on efficiency, competition, and capital formation related to the amendments to conform the portfolio holdings website disclosure to our amendments to Form N-MFP will be the same as those described in the section discussing our amendments to Form N-MFP. *See infra* section III.G. We also note that the economic effects related to disclosure of information related to the imposition of fees and/or gates and sponsor support reported on Form N-CR will be similar to economic effects we discuss relating to new Form N-CR. *See infra* section III.F.8.

inform shareholders about the risks of investing in money market funds, which should result in shareholders making investment decisions that better match their investment preferences. We believe that this will have effects on efficiency, competition, and capital formation that are similar to those that are outlined in the Macroeconomic Consequences section below.[1144]

We believe that the requirements could increase informational efficiency by providing additional information about money market funds' liquidity, shareholder flows, market-based NAV per share, imposition of fees and/or gates, and use of affiliate financial support, to investors and the Commission. This in turn could assist investors in analyzing the risks associated with certain funds. In particular, the daily disclosure of daily and weekly liquid assets, along with the daily disclosure of NAV to four decimal places, should better enable investors to understand the risks of a specific fund, which could increase allocative efficiency and could positively affect competition by permitting investors to choose whether to invest in certain funds based on this information. However, if investors were to move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the disclosure requirements, this could adversely affect the competitive stance of certain money market funds, or the money market fund industry generally.

Certain parts of the disclosure amendments may have other specific effects on competition. To the extent some money market funds do not currently and voluntarily calculate and disclose daily market-based NAV per share data (rounded to the fourth decimal place), our amended disclosure requirements may promote competition by helping to level the associated costs incurred by all money market funds and neutralize any competitive advantage associated

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1144 *See infra* section III.K.2.

with determining not to calculate and disclose daily current per-share NAV. We also note that our amendment to require disclosure of affiliate sponsor support may adversely affect competition if investors move their assets to larger fund complexes on the theory that they may be more likely than smaller entities to provide financial support to their funds.

The requirements to disclose certain information about money market funds' liquidity, shareholder flows, market-based NAV per share, imposition of fees and/or gates, and use of affiliate financial support also could have effects on capital formation. The required disclosures may impose external market discipline on portfolio managers, which in turn could create market stability and enhance capital formation, if the resulting market stability encouraged more investors to invest in money market funds. However, the requirements could detract from capital formation by decreasing market stability if investors redeem more quickly during times of stress as a result of the disclosure requirements, and one commenter noted this increased risk as a potential cost to the fund.[1145] The required disclosure could assist the Commission in overseeing money market funds and developing regulatory policy affecting the money market fund industry, which might affect capital formation positively if the resulting regulatory framework more efficiently or more effectively encouraged investors to invest in money market funds.

The requirement to disclose the fund's current NAV to four decimal places should not have any effect on capital flows because funds will also transact at four decimal places. When compared to alternatives like ultra-short bond funds, which disclose and transact at three decimal places, money market prices may appear more volatile on a day-to-day basis if the greater

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1145 *See* State Street Comment Letter, at Appendix A. The commenter did not provide a quantitative estimate of such risk.

precision in NAV disclosure leads to a greater frequency of fluctuations in NAV.[1146] This could incentivize investors to switch to these alternatives. However, over longer horizons like a month or a year these alternatives are likely to have more volatile NAVs than money market funds. The disclosure of daily and weekly liquid assets may increase the volatility of capital flows for money market funds, as it may create an incentive for investors to redeem shares when liquid assets fall or reach the threshold at which the board may impose a redemption fee or gate. Disclosing levels of liquid assets could lead to pre-emptive redemptions if daily or weekly liquid assets drop to a level at which investors anticipate that there is a greater likelihood of the fund imposing a redemption fee or gate. However, as discussed in detail above, the board's discretion to impose a fee or a gate mitigates the concern that investors will be able to accurately forecast such an event, leading them to pre-emptively withdraw their assets from the fund. We discuss this concern in more detail in section III.A.

A possible alternative suggested by commenters was to only have website disclosure apply to stable NAV funds.[1147] Allowing floating NAV funds not to disclose information on their website would lower the costs for these funds. Nevertheless, we rejected this alternative because we believe that the benefits we discuss above regarding disclosure apply regardless of whether a fund has a stable or floating NAV. Both types of funds, for example, could impose a fee or a gate so this information is valuable to both types of investors and, if only offered to one, could affect competition. For example, if a stable NAV investor has more information than a

[1146] *But see supra* note 521 and accompanying text (discussing staff analysis showing that, historically, over a twelve-month period, 100% of ultra-short bond funds have fluctuated in price (using 10 basis point rounding), compared with 53% of money market funds that have fluctuated in price (using basis point rounding)).

[1147] *See, e.g.,* Legg Mason & Western Asset Comment Letter; ICI Comment Letter; IDC Comment Letter.

floating NAV investor about a possible fee or gate, then it is reasonable to assume that a stable NAV investor would have more confidence in his or her investment. The added disclosure for stable NAV funds could also increase market discipline in these funds, leading to investors' increased willingness to participate in this market and increase capital formation in these funds.

Another alternative would have been to require weekly instead of daily website disclosure of the daily and weekly liquids assets and net shareholder flow.[1148] Being required to disclose this information weekly instead of daily would lower the costs on funds because they would not have to report daily. However, we rejected this alternative because, as discussed above, in times of market stress, money market funds may face rapid, heavy redemptions, which could quickly affect their liquidity. These stresses could happen over a period of a day. As such, if investors have confidence that they will have the necessary information to make an informed decision quickly in a time of stress, then this may lead to additional capital for funds. Likewise, we also believe that daily disclosure instead of weekly could lead to more market discipline among funds, resulting in investors' increased willingness to participate in this market, which could also lead to additional capital for funds.

i. *Costs of disclosure of daily and weekly liquid assets and net shareholder flows*

Costs associated with the requirement for a fund to disclose information about its daily liquid assets, weekly liquid assets, and net shareholder flows on the fund's website include initial, one-time costs, as well as ongoing costs. Initial costs include the costs to design the schedule, chart, graph, or other depiction showing historical liquidity and flow information in a manner that clearly communicates the required information and to make the necessary software

[1148] *See* Schwab Comment Letter; Federated VIII Comment Letter.

programming changes to the fund's website to present the depiction in a manner that can be updated each business day. Funds also would incur ongoing costs to update the depiction of daily liquid assets and weekly liquid assets and net shareholder flows each business day.[1149] The Proposing Release estimated that the average one-time costs for each money market fund to design and present the historical depiction of daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, would be $20,150.[1150] The Proposing Release also estimated that the average ongoing annual costs that each fund would incur to update the required disclosure would be $9,184.[1151]

In the Proposing Release, we stated that we believed funds should incur no additional costs in obtaining the percentage of daily liquid assets and weekly liquid assets, as funds are currently required to make such calculation under rule 2a-7. One commenter disagreed, noting that there would be costs because of additional controls associated with public disclosure, but did not provide a quantitative estimate of such costs.[1152] Two commenters generally believed that weekly disclosure of the data, as opposed to daily disclosure, would substantially reduce costs to funds, but they did not provide a quantitative estimate of the difference between the cost of daily and weekly disclosure.[1153] Additionally, one commenter objected to including historical information regarding weekly and daily liquid assets and net shareholder flows on a fund's website because of the expense involved in restructuring fund websites and maintaining such

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1149 *See* State Street Comment Letter

1150 *See* Proposing Release, *supra* note 25, at n.642.

1151 *See* Proposing Release, *supra* note 25, at n.643.

1152 *See* State Street Comment Letter, at Appendix A.

1153 *See* Federated VIII Comment Letter; Schwab Comment Letter.

information, but did not provide a quantitative estimate of such expenses.[1154] One commenter also noted the potential cost of the risk of shareholders making redemption decisions in reliance on the disclosed information.[1155] The commenter, however, did not provide a quantitative estimate for this risk.[1156]

We agree that the costs for certain money market funds to upgrade internal systems and software, and/or engage third-party service providers if a money market fund does not have existing relevant systems, could be higher than those average one-time costs estimated in the Proposing Release. However, because the estimated one-time costs were based on the mid-point of a range of estimated costs, the higher costs that may be incurred by certain industry participants have already been factored into our estimates.[1157] While requiring weekly disclosure instead of daily disclosure could reduce costs for funds, we continue to believe that daily disclosure would convey important information to shareholders that weekly disclosure may not.[1158] We also believe that the benefits of increased transparency that would result from the disclosure requirements at hand outweigh the potential costs of reactionary redemptions resulting from the disclosure.[1159] The Commission agrees that money market funds may incur additional costs associated with the enhanced controls required to publicly disseminate daily and weekly liquid asset data, which costs were not estimated in the Proposing Release. The Commission has

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1154 *See* UBS Comment Letter.

1155 *Id.*

1156 *See supra* section III.E.8 for a discussion of the reasons that the Commission cannot measure the quantitative benefits of these proposed requirements at this time.

1157 *See* Proposing Release, *supra* note 25, at n.1044.

1158 *See supra* notes 1056-1057 and accompanying text.

1159 *See supra* notes 1060-1063 and accompanying text.

incorporated these additional costs into its new estimates of ongoing annual costs.

Based on these considerations, as well as updated industry data, we now estimate that the average one-time costs for each money market fund to design and present the historical depiction of daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, would be $20,280.[1160] We also estimate that the average ongoing annual costs that each fund would incur to update the required disclosure would be $10,274.[1161] Our estimate of average ongoing annual costs incorporates the costs associated with the enhanced controls required to publicly disseminate daily and weekly liquid asset data.[1162]

ii. Costs of disclosure of fund's current NAV per share

Costs associated with the requirement for a fund to disclose information about its daily current NAV on the fund's website include initial, one-time costs, as well as ongoing costs. Initial costs include the costs to design the schedule, chart, graph, or other depiction showing historical NAV information in a manner that clearly communicates the required information and to make the necessary software programming changes to the fund's website to present the depiction in a manner that will be able to be updated each business day. Funds also would incur ongoing costs to update the depiction of the fund's current NAV each business day. Because floating NAV money market funds will be required to calculate their sale and redemption price each day, these funds should incur no additional costs in obtaining this data for purposes of the

1160 We estimate that these costs would be attributable to project assessment (associated with designing and presenting the historical depiction of daily liquid assets and weekly liquid assets and net shareholder flows), as well as project development, implementation, and testing. The costs associated with these activities are all paperwork-related costs and are discussed in more detail below. *See infra* section IV.A.6.b.

1161 *See id.*

1162 *See id.*

disclosure requirements. Stable price money market funds, which will be required to calculate their current NAV per share daily pursuant to amendments to rule 2a-7, likewise should incur no additional costs in obtaining this data for purposes of the disclosure requirements. The Proposing Release estimated that the average one-time costs for each money market fund to design and present the fund's current NAV each business day would be $20,150.[1163] The Commission also estimated that the average ongoing annual costs that each fund would incur to update the required disclosure would be $9,184.[1164]

Certain commenters generally noted that complying with the new website disclosure requirements would add costs for funds, including costs to upgrade internal systems and software relevant to the website disclosure requirements, as well as costs to engage third-party service providers for those money market fund managers that do not have existing relevant systems.[1165] One commenter noted that these costs could potentially be "significant to [a money market fund]

1163 *See* Proposing Release, *supra* note 25, at n.664.

1164 *See id.*, at n.665.

1165 *See, e.g.*, UBS Comment Letter ("The SEC also proposed additional information regarding the posting of: (i) the categories of a money fund's portfolio securities; (ii) maturity date information for each of the fund's portfolio securities; and (iii) market-based values of the fund's portfolio securities at the same time as this information becomes publicly available on Form N-MFP. We believe this information is too detailed to be useful to most investors and would be cost prohibitive to provide. Complying with these new website disclosure requirements would add notable costs for each money fund that UBS Global AM advises."); Chamber II Comment Letter ("With respect to the website disclosure requirements, internal systems and software would need to be upgraded or, for those MMF managers that do not have existing systems, third-party service providers would need to be engaged. The costs (which ultimately would be borne by investors through higher fees or lower yields) could potentially be significant to an MMF and higher than those estimated in the Proposal."); Dreyfus Comment Letter (noting that "several of the new Form reporting and web site and registration statement disclosure requirements . . . come with . . . material cost to funds and their sponsors"); *see also* Fin. Svcs. Roundtable Comment Letter (noting that the disclosure requirements would produce "significant cost to the fund and ultimately to the fund's investors"); SSGA Comment Letter (urging the Commission to consider the "substantial administrative, operational, and expense burdens" of the proposed disclosure-related amendments); Chapin Davis Comment Letter (noting that the disclosure- and reporting-related amendments will result in increased costs in the form of fund staff salaries, or consultant, accountant, and lawyer hourly rates, that will ultimately be borne in large part by investors and portfolio issuers).

and higher than those estimated in the Proposal."[1166] However, another commenter stated that it agrees that those money market funds that presently publicize their current NAV per share daily on the fund's website will incur few additional costs to comply with the proposed disclosure requirements, and also that it agrees with the Commission's estimates for the ongoing costs of providing a depiction of the fund's current NAV each business day.[1167]

We agree that the costs for certain money market funds to upgrade internal systems and software, and/or engage third-party service providers if a money market fund does not have existing relevant systems, could be higher than those average one-time costs estimated in the Proposing Release. However, because the estimated one-time costs were based on the mid-point of a range of estimated costs, the higher costs that may be incurred by certain industry participants have already been factored into our estimates.[1168] Based on these considerations, as well as updated industry data, we now estimate that the average one-time costs for each money market fund to design and present the fund's daily current NAV would be $20,280.[1169] We also estimate that the average ongoing annual costs that each fund would incur to update the required disclosure would be $9,024.[1170]

iii. Costs of daily calculation of current NAV per share

1166 *See* Chamber II Comment Letter.

1167 *See* State Street Comment Letter, at Appendix A; *see also* HSBC Comment Letter (stating that the proposed disclosure requirements should not produce any "meaningful cost").

1168 *See* Proposing Release, *supra* note 25, at n.1056.

1169 We estimate that these costs would be attributable to project assessment (associated with designing and presenting the historical depiction of the fund's daily current NAV per share), as well as project development, implementation, and testing. The costs associated with these activities are all paperwork-related costs and are discussed in more detail below. *See infra* section IV.A.6.c.

1170 *See id.*

The primary costs associated with the requirement for a fund to calculate its current NAV per share each day are the costs for funds to determine the current values of their portfolio securities each day.[1171] We estimate that 25% of active money market funds, or 140 funds, will incur new costs to comply with this requirement,[1172] because the requirement will result in no additional costs for those money market funds that presently determine their current NAV per share daily on a voluntary basis.[1173] The Proposing Release estimated that the average additional annual costs that a fund would incur associated with calculating its current NAV daily would range from $6,111 to $24,444.[1174] One commenter stated that it agrees with the Commission's estimates for the ongoing costs of providing a depiction of the fund's current NAV each business day.[1175] However, most comments on the proposed current NAV disclosure requirement did not discuss the Commission's estimates of the costs a fund would incur to calculate its current NAV per share daily, separate from their discussion of the general costs associated with the proposed NAV website disclosure requirement.[1176] After considering these comments, our current methods of estimating the costs associated with the NAV calculation requirement, described in more detail below, are the same estimation methods we used in the Proposing Release.

All money market funds are presently required to disclose their market-based NAV per

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1171 Additionally, funds may incur some costs associated with adding the current values of the fund's portfolio securities and dividing this sum by the number of fund shares outstanding; however, we expect these costs to be minimal.

1172 The Commission estimates that there are currently 559 active money market funds. This estimate is based on a staff review of reports on Form N-MFP filed with the Commission for the month ended February 28, 2014. 559 money market funds x 25% = approximately 140 money market funds.

1173 Based on our understanding of money market fund valuation practices, we estimate that 75% of active money market funds presently determine their current NAV daily.

1174 *See* Proposing Release, *supra* note 25, at n.692.

1175 *See* State Street Comment Letter, at Appendix A.

1176 *See supra* notes 1165-1167.

share monthly on Form N-MFP, and the frequency of this disclosure will increase to weekly.[1177] As discussed below, some money market funds license a software solution from a third party that is used to assist the funds to prepare and file the information that Form N-MFP requires, and some funds retain the services of a third party to provide data aggregation and validation services as part of preparing and filing of reports on Form N-MFP on behalf of the fund.[1178] We expect, based on conversations with industry representatives, that money market funds that do not presently calculate the current values of their portfolio securities each day generally would use the same software or service providers to calculate the fund's current NAV per share daily that they presently use to prepare and file Form N-MFP.[1179] For these funds, the associated base costs of using this software or these service providers should not be considered new costs. However, the third-party software suppliers or service providers may charge more to funds to calculate a fund's current NAV per share daily, which costs would be passed on to the fund. While we do not have the information necessary to provide a point estimate (as such estimate would depend on a variety of factors, including discounts relating to volume and economies of scale, which pricing services may provide to certain funds), we estimate that the average additional annual costs that a fund would incur associated with calculating its current NAV daily would range from $6,111 to $24,444.[1180] Assuming, as discussed above, that 140 money market

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1177 *See* Form N-MFP Item A.21 and B.5 (requiring money market funds to provide NAV data as of the close of business on each Friday during the month reported).

1178 *See infra* section IV.C.3.

1179 One commenter agreed with this expectation. *See* State Street Comment Letter, at Appendix A.

1180 We estimate, based on discussions with industry representatives that obtaining the price of a portfolio security would range from $0.25 - $1.00 per CUSIP number per quote. We estimate that each money market fund's portfolio consists of, on average, securities representing 97 CUSIP numbers. Therefore, the additional daily costs to calculate a fund's market-based NAV per share would range from $24.25 ($0.25 × 97) to $97.00 ($1.00 × 97). The additional annual costs would therefore range from $6,111 (252 business funds do not presently determine and publish their current NAV per share daily, the average additional annual cost that these 140 funds will collectively incur would range from $855,540 to $3,422,160.[1181] These costs could be less than our estimates if funds were to receive significant discounts based on economies of scale or the volume of securities being priced.

iv. Costs of harmonization of rule 2a-7 and Form N-MFP portfolio holdings disclosure requirements

Because the new portfolio holdings information that a fund is required to present on its website overlaps with the information that a fund would be required to disclose on Form N-MFP, we believe that the costs a fund will incur to draft and finalize the disclosure that will appear on its website will largely be incurred when the fund files Form N-MFP, as discussed below in section III.G. The Proposing Release estimated that, in addition, a fund would incur annual costs of $2,484 associated with updating its website to include the required monthly disclosure.[1182]

As discussed above, certain commenters generally noted that complying with the new website disclosure requirements would add costs for funds, including costs to upgrade internal systems and software relevant to the website disclosure requirements, as well as costs to engage third-party service providers for those money market fund managers that do not have existing relevant systems.[1183] One commenter, however, noted that the portfolio holdings disclosure requirements "should not cause a significant cost increase . . . as long as the information is made

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days in a year × $24.25) to $24,444 (252 business days in a year × $97.00).

1181 This estimate is based on the following calculations: low range of $6,111 x 140 funds = $855,540; high range of $24,444 x 140 funds = $3,422,160. *See supra* note 1180. This figure likely overestimates the costs that stable price funds would incur if the floating NAV proposal were adopted. This is because fewer than 559 active money market funds would be stable price funds required to calculate their current NAV per share daily, and thus the estimate of 140 funds (25% x 559 active funds) that would be required to comply with this requirement is likely over-inclusive.

1182 *See* Proposing Release, *supra* note 25, at n.672.

1183 *See supra* note 1165.

available from relevant accounting systems,"[1184] and another commenter stated that the proposed disclosure requirements generally should not produce any meaningful costs.[1185] Another commenter urged the Commission to harmonize new disclosure requirements so that funds would face lower administrative burdens, and investors would bear correspondingly fewer costs.[1186] As described above, the portfolio holdings disclosure requirements we are adopting have changed slightly from those that we proposed, in order to conform to modifications we are making to the proposed Form N-MFP disclosure requirements. However, we believe that these revisions do not produce additional burdens for funds and thus do not affect previous cost estimates. Because the 2010 money market fund reforms already require money market funds to post monthly portfolio information on their websites,[1187] funds should not need to upgrade their systems and software to comply with the new portfolio holdings information disclosure requirements. The Commission therefore does not believe that comments about the costs required to upgrade relevant systems and software should affect its estimates of the costs associated with the portfolio holdings disclosure requirements. Based on these considerations, as well as updated industry data, we now estimate that each fund would incur annual costs of $2,724 in updating its website to include the required monthly disclosure.[1188]

1184 *See* State Street Comment Letter, at Appendix A.

1185 *See* HSBC Comment Letter.

1186 *See* Fin. Svcs. Roundtable Comment Letter.

1187 *See* 2010 Adopting Release, *supra* note 17, at section II.E.1.

1188 We estimate that these costs would be attributable to project assessment (associated with designing and presenting the required portfolio holdings information), as well as project development, implementation, and testing. The costs associated with these activities are all paperwork-related costs and are discussed in more detail below. *See infra* section IV.A.6.a.

v. Costs of disclosure regarding financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions

Because the required website disclosure overlaps with the information that a fund must disclose on Form N-CR when the fund receives financial support from a sponsor or fund affiliate, or when the fund imposes or removes liquidity fees or suspends or resumes fund redemptions, we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear on its website will largely be incurred when the fund files Form N-CR, as discussed below in section III.F. The Proposing Release estimated that, in addition, a fund would incur costs of $207 each time that it updates its website to include the required disclosure.[1189]

While certain commenters generally noted, as discussed above, that complying with the new website disclosure requirements would add costs for funds,[1190] one commenter stated that the costs of disclosing liquidity fees and gates and instances of financial support on the fund's website would be minimal when compared to other costs,[1191] and another commenter stated that the proposed disclosure requirements should not produce any meaningful costs.[1192] As described above, we have modified the required time frame for disclosing information about financial support received by a fund on the fund's website. However, this modification does not produce additional burdens for funds and thus does not affect previous cost estimates. Taking this into consideration, as well as the fact that we received no comments providing specific suggestions or critiques about our methods of estimating the burdens associated with the Form N-CR-linked

1189 *See* Proposing Release, *supra* note 25, at nn.464, 629.

1190 *See supra* note 1165.

1191 *See* State Street Comment Letter, at Appendix A.

1192 *See* HSBC Comment Letter.

website disclosure requirements, the Commission has not modified the estimated costs associated with these requirements, although it has modified its cost estimates based on updated industry data. We now estimate that a fund would incur costs of $227 each time that it updates its website to include the required disclosure.[1193]

F. Form N-CR

1. Introduction

Today we are adopting, largely as we proposed, a new requirement that money market funds file a current report with us when certain significant events occur.[1194] New Form N-CR will require disclosure of certain specified events. Generally, a money market fund will be required to file Form N-CR if a portfolio security defaults, an affiliate provides financial support to the fund, the fund experiences a significant decline in its shadow price, or when liquidity fees or redemption gates are imposed and when they are lifted.[1195] In most cases, a money market fund will be required to submit a brief summary filing on Form N-CR within one business day of the occurrence of the event, and a follow-up filing within four business days that includes a more

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1193 The costs associated with these activities are all paperwork-related costs and are discussed in more detail below. *See infra* section IV.A.6.d.

1194 As we proposed, this requirement will be implemented through our adoption of new rule 30b1-8, which requires money market funds to file a report on new Form N-CR in certain circumstances. *See* rule 30b1-8; Form N-CR.

1195 *See* Form N-CR Parts B-H. More specifically, adopted largely as proposed, these events include instances of portfolio security default (Form N-CR Part B), financial support (Form N-CR Part C), a decline in a stable NAV fund's current NAV per share (Form N-CR Part D), a decline in weekly liquid assets below 10% of total fund assets (Form N-CR Part E), whether a fund has imposed or removed a liquidity fee or gate (Form N-CR Parts E, F and G), or any such other information a fund, at is option, may choose to disclose (Form N-CR Part H). In addition, as proposed, Form N-CR Part A will also require a fund to report the following general information: (i) the date of the report; (ii) the registrant's central index key ("CIK") number; (iii) the EDGAR series identifier; (iv) the Securities Act file number; and (v) the name, email address, and telephone number of the person authorized to receive information and respond to questions about the filing. *See* Form N-CR Part A. As proposed the name, email address, and telephone number of the person authorized to receive information and respond to questions about the filing will not be disclosed publicly on EDGAR.

complete description and information.[1196]

We proposed requiring reporting on Form N-CR under both the floating NAV and fees and gates reform alternatives, but the Form differed in certain respects depending on the alternative.[1197] Today we are adopting a combination of the alternatives, and therefore final Form N-CR is a combined single form.[1198]

As we stated in the Proposing Release,[1199] the information provided on Form N-CR will enable the Commission to enhance its oversight of money market funds and its ability to respond to market events. The Commission will be able to use the information provided on Form N-CR in its regulatory, disclosure review, inspection, and policymaking roles. Requiring funds to report these events on Form N-CR will provide important transparency to fund shareholders, and also will provide information more uniformly and efficiently to the Commission. It will also provide investors and other market observers with better and more timely disclosure of potentially important events.

Commenters generally supported new Form N-CR.[1200] For example, one commenter noted that Form N-CR would generally "[alert] the SEC to issues the funds may be having" and

1196 A report on Form N-CR will be made public on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") immediately upon filing.

1197 For example, under the liquidity fees and gates alternative, we proposed Form N-CR to include additional disclosures specifically related to liquidity fees and gates, which we did not propose to under the floating NAV alternative. *See* Proposing Release, *supra* note 25, at section III.G.2; proposed (Fees & Gates) Form N-CR Parts E, F and G. In addition to other changes we are making today to the form, the final version of Form N-CR includes these additional Parts. *See* Form N-CR Parts E, F and G. We are also reconciling the introduction of Part D, which was worded differently under each of the respective main alternatives. *See* proposed (FNAV) Form N-CR Part D; proposed (Fees & Gates) Form N-CR Part D; *see also, infra* note 1263.

1198 *Id.*

1199 *See* Proposing Release at paragraph containing n.697.

1200 *See, e.g.,* CFA Institute Comment Letter; American Bankers Ass'n Comment Letter; Vanguard Comment Letter; Schwab Comment Letter; ICI Comment Letter.

"[provide] the public with current information that investors need."[1201] On the other hand, some commenters also voiced objections, suggesting that the form may be burdensome or redundant, and also offered specific improvements.[1202] As discussed in more detail below, we are making various changes to Form N-CR to address some of these concerns. However, while we appreciate commenters' concerns about possible redundancies of Form N-CR in light of the concurrent website or SAI disclosures, we believe each of these different disclosures to be appropriate because they serve distinct purposes.[1203]

2. *Part B: Defaults and Events of Insolvency*

Part B of Form N-CR is being adopted largely as proposed.[1204] We are adopting, as proposed, the requirement that a money market fund report to us if the issuer or guarantor of a security that makes up more than one half of one percent of a fund's total assets defaults or

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1201 *See* CFA Institute Comment Letter.

1202 *See, e.g.,* Dreyfus Comment Letter; Fidelity Comment Letter; ICI Comment Letter; Federated VIII Comment Letter; SIFMA Comment Letter.

1203 *See* discussion following *infra* notes 1248 and 1249 and accompanying text.

1204 *See* proposed (FNAV) Form N-CR Part B; proposed (Fees & Gates) Form N-CR Part B. In the Proposing Release, we proposed Form N-CR to require a fund to disclose the following information: (i) the security or securities affected; (ii) the date or dates on which the defaults or events of insolvency occurred; (iii) the value of the affected securities on the dates on which the defaults or events of insolvency occurred; (iv) the percentage of the fund's total assets represented by the affected security or securities; and (v) a brief description of the actions the fund plans to take in response to such event. *See id.*

Among the other changes discussed in this section, in the final amendments we are also adding the clause "or has taken" to the "brief description of actions fund plans to take, or has taken, in response to the default(s) or event(s) of insolvency" as required by Item B.5 of Form N-CR. *See* Form N-CR Item B.5. We are clarifying that filers should not omit in Item B.5 any actions that they may have already taken in response to a default or event of insolvency prior to their filing of Form N-CR. In particular, if a fund were able to complete all actions in response to a default before the deadline of the follow-up filing, it could have otherwise effectively omitted its entire response to the default from being disclosed in Item B.5. We believe such an omission would significantly diminish the informational utility of Form N-CR to the Commission and investors in understanding how a fund has responded to a default.

becomes insolvent.[1205] Such a report will, also as proposed, include the nature and financial effect of the default or event of insolvency, as well as the security or securities affected.[1206] As we noted in the Proposing Release, the Commission believes that the factors specified in the required disclosure are necessary to understand the nature and extent of a default, as well as the potential effect of a default on the fund's operations and its portfolio as a whole.[1207]

As stated above, we proposed to require disclosure of the security or securities affected by the default.[1208] In a change from the proposal, to help us better identify defaulted portfolio securities, the final form now requires funds to report the name of the issuer, the title of the issue and at least two identifiers, if available (*e.g.,* CUSIP, ISIN, CIK, Legal Entity Identifier ("LEI"))

1205 *See* Form N-CR Part B (requiring filing if the issuer of one or more of the fund's portfolio securities, or the issuer of a demand feature or guarantee to which one of the fund's portfolio securities is subject, and on which the fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or event of insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the demand feature or guarantee) accounted for at least ½ of 1 percent of the fund's total assets immediately before the default or event of insolvency).

1206 Form N-CR Part B, adopted largely as proposed, will require a fund to disclose the following information: (i) the security or securities affected, including the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available; (ii) the date or dates on which the defaults or events of insolvency occurred; (iii) the value of the affected securities on the dates on which the defaults or events of insolvency occurred; (iv) the percentage of the fund's total assets represented by the affected security or securities; and (v) a brief description of the actions the fund plans to take, or has taken, in response to such event. As proposed, an instrument subject to a demand feature or guarantee would not be deemed to be in default, and an event of insolvency with respect to the security would not be deemed to have occurred, if: (i) in the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a guarantee with respect to an asset-backed security pursuant to rule 2a-7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due. *See* Instruction to Form N-CR Part B. This instruction is based on the current definition of the term "default" in the provisions of rule 2a-7 that require funds to report defaults or events of insolvency to the Commission. *See* current rule 2a-7(c)(7)(iv).

1207 *See* Proposing Release, *supra* note 25, at text following n.703.

1208 Proposed (FNAV) Form N-CR Item B.1; Proposed (Fees & Gates) Form N-CR Item B.1.

when they file a report under part B of the form.[1209] This requirement is similar to what we proposed and are adopting with respect to Items C.1 to C.5 of Form N-MFP.[1210] In particular, better identification of the particular fund portfolio security or securities subject to a default or event of insolvency at the time of notice to the Commission will facilitate the staff's monitoring and analysis efforts, as well as inform any action that may be required in response to the risks posed by such an event. Fund shareholders and potential investors will similarly benefit from the clear identification of defaulted fund portfolio securities when evaluating their investments.[1211]

One commenter expressed concern that publicly identifying a single security that has defaulted could be problematic if other contextual information about the quality of the fund's other holding is not immediately available.[1212] We note that the Form N-CR report will provide the value as well as the relative size of any defaulted security compared to the rest of a fund's portfolio, providing some context for the default. In addition, as further described in section III.F.6 below, we are also adopting a new Part H of Form N-CR that will permit money market funds, in their discretion, to discuss any other events or information that they may consider material or relevant, which should allow for additional context if necessary.

3. Part C: Financial Support

We are also adopting a requirement that money market funds report instances of financial

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1209 *See* Form N-CR Item B.1. These requirements are similar to Form N-MFP Items C.1 to C.5 but are reported on a more timely basis on Form N-CR. Much like under Form N-MFP, we note that the requirement to include multiple identifiers is only required if such identifiers are actually available.

1210 *See* Proposing Release, *supra* note 25, at nn.754-757 and accompanying text; *see supra* section III.G.

1211 Although current rule 2a-7(c)(7)(iii)(A) requires money market funds to report defaults or events of insolvency to the Commission by email, as proposed, we are eliminating this now duplicative requirement.

1212 *See* Dreyfus Comment Letter.

support by sponsors or other affiliates on Part C of Form N-CR[1213] with several changes from the proposal.[1214] We have modified the definition of financial support from the proposal in response to comments, as discussed below. This revised definition will affect when Part C needs to be filed. When filed, the Part C report will, as proposed, require disclosure of the nature, amount, and terms of the support, as well as the relationship between the person providing the support and the fund[1215] except that, in a change from the proposal, the report will also require certain

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1213 *See* Form N-CR Part C. Today, when a sponsor supports a fund by purchasing a security pursuant to rule 17a-9, we require prompt disclosure of the purchase by email to the Director of the Commission's Division of Investment Management, but we do not otherwise receive notice of such support unless the fund needs and requests no-action or other relief. *See* current rule 2a-7(c)(7)(iii)(B). As proposed, we are eliminating this requirement, as it would duplicate the Form N-CR reporting requirements discussed in this section. As we stated in the text following note 711 of the Proposing Release, the Form N-CR reporting requirement will permit the Commission additionally to receive notification of other kinds of financial support (which could affect a fund as significantly as a security purchase pursuant to rule 17a-9) and a description of the reason for the support, and it will also assist investors in understanding the extent to which money market funds receive financial support from their sponsors or other affiliates.

1214 *See* proposed (FNAV) Form N-CR Part C; proposed (Fees & Gates) Form N-CR Part C. In particular, in the Proposing Release we proposed the term "financial support" to include, but not be limited to, (i) any capital contribution, (ii) purchase of a security from the fund in reliance on rule 17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) purchase of fund shares, (v) execution of letter of credit or letter of indemnity, (vi) capital support agreement (whether or not the fund ultimately received support), (vii) performance guarantee, or (viii) any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress. *See* Proposing Release, *supra* note 25, at nn.705-712 and accompanying discussion. We also proposed Form N-CR to require a fund to disclose the following information: (i) a description of the nature of the support; (ii) the person providing support; (iii) a brief description of the relationship between the person providing the support and the fund; (iv) a brief description of the reason for the support; (v) the date the support was provided; (vi) the amount of support; (vii) the security supported, if applicable; (viii) the market-based value of the security supported on the date support was initiated, if applicable; (ix) the term of support; and (x) a brief description of any contractual restrictions relating to support. In addition, if an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, purchases a security from the fund in reliance on rule 17a-9, we proposed that the money market fund would be required to provide the purchase price of the security, as well as certain other information. *See* Instruction to proposed (FNAV) Form N-CR Part C; Instruction to proposed (Fees & Gates) Form N-CR Part C.

1215 *See id.* Form N-CR Items C.1 through C.10 will require, with changes from the proposal, a fund to disclose the following information: (i) a description of the nature of the support; (ii) the person providing support; (iii) a brief description of the relationship between the person providing the support and the fund; (iv) the date the support was provided; (v) the amount of support, including the amount of impairment and the overall amount of securities supported; (vi) the security supported, including the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available; (vii) the market-based value of the security supported on the date support was initiated, if applicable; (viii) a brief description of the reason for the support; (ix) the term of support; and (x) a brief description of any identifying information about securities that are the subject of any financial support.[1216]

As we noted in the Proposing Release, we believe that requiring disclosure of financial support from a fund sponsor or affiliate will provide important, near real-time transparency to shareholders and the Commission, and will therefore help shareholders better understand the ongoing risks associated with an investment in the fund.[1217] The information provided in the required disclosure is necessary for investors to understand the nature and extent of the sponsor's discretionary support of the fund and will also assist Commission staff in analyzing the economic effects of such financial support.[1218]

a. Definition of Financial Support

Although a number of commenters generally supported the proposed financial support disclosure,[1219] many of these supporters and other commenters also argued that the proposed

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contractual restrictions relating to support. We have also rearranged proposed Item C.4 (description of the reason for the support) to be new Item C.8 in order to better streamline the disclosures required to be filed within one business day (Items C.1 through C.7) versus four business days (Items C.8 through C.10). *See infra* section III.F.7.

1216 *See* Form N-CR Item C.6 (now requiring, for any security supported, disclosure of the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available. We are including the new securities identification requirements for the same reasons we are including it in Part B, as discussed above.

1217 *See* Proposing Release, *supra* note 25, at n.705 and accompanying text. *See also, e.g.,* Schwab Comment Letter (noting that the "[p]roposed disclosures around instances of sponsor support would provide investors with useful context for analyzing the stability of the fund"). In addition, as we discussed at n.712 in the Proposing Release, money market funds' receipt of financial support from sponsors and other affiliates has not historically been prominently disclosed to investors, which has resulted in a lack of clarity among investors about which money market funds have received such financial support.

1218 *See* Proposing Release, *supra* note 25, at text following n.708. Another commenter also suggested that disclosure of financial support on Form N-CR may have the effect of reducing the likelihood that funds will need such support in the future. *See* American Bankers Ass'n Comment Letter ("[k]nowing that any form of sponsor support would be required to be disclosed within 24 hours, fund managers would likely do everything they could to avoid the need for sponsor support.").

1219 *See, e.g.,* Oppenheimer Comment Letter ("...we support the SEC's proposal to require money market funds to disclose current and historical instances of sponsor support for stable NAV funds [...]."); Schwab Comment Letter; T. Rowe Price Comment Letter; American Bankers Ass'n Comment Letter; Federated definition of "financial support" was ambiguous and could trigger unnecessary filings.[1220] Many commenters suggested that the catchall provision of the proposed definition, which would require reporting of "any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress," was too broad.[1221] Some commenters stated that the proposed definition would trigger reports on Form N-CR of routine transactions that occur in the ordinary course of business, which do not indicate stress on the fund.[1222] For example, a few commenters suggested that the proposed definition would result in Form N-CR filings with respect to ordinary fee waivers and expense reimbursements, inter-fund lending, purchases of fund shares, reimbursements made by the sponsor in error, and certain other routine fund transactions.[1223] Because many of the above actions likely would not indicate stress on a

VIII Comment Letter.

1220 *See, e.g.*, Schwab Comment Letter (noting that the "[p]roposed disclosures around instances of sponsor support would provide investors with useful context for analyzing the stability of the fund, though we would note that not all instances of sponsor support are indicative of a fund under even mild stress, let alone nearing the point of breaking the buck."); ICI Comment Letter ("We are concerned that the definition of 'financial support' for purposes of the required disclosures is overly broad and would include the reporting of routine fund matters."); Federated II Comment Letter; Deutsche Comment Letter; UBS Comment Letter.

1221 *See, e.g.*, Dreyfus Comment Letter, Deutsche Comment Letter, ICI Comment Letter, Fidelity Comment Letter; UBS Comment Letter.

1222 *See, e.g.*, Dechert Comment Letter (stating that the "definition of 'financial support' is over-inclusive and would capture certain actions taken in the ordinary course of business that would not signal any financial distress on the part of the money fund."); SIFMA Comment Letter, ICI Comment Letter, Federated II Comment Letter, Vanguard Comment Letter.

1223 *See, e.g.*, PWC Comment Letter ("... an expense waiver is more often than not a means to limit a fund's expense ratio, and not to avoid the NAV falling below $1.00 per share."); BlackRock II Comment Letter ("[a]ffiliates and fund sponsors often use a fund as a cash management vehicle and routinely purchase fund shares. These purchases in no way indicate a fund is under stress."); Fidelity Comment Letter (noting that "a '(iv) purchase of fund shares' may be interpreted to include a sponsor's investment of seed money to launch a new fund and investment by affiliated funds or transfer agents on behalf of either funds using MMFs as an overnight cash sweep or central funds investing pursuant to the terms of an exemptive order." and that other routine items might include "expense caps, inter-fund lending, loans and overdrafts due to settlement timing issues, and credits that service providers of a MMF may give as a result of cash held at the service provider"). *See also, e.g.*, Vanguard Comment Letter, Federated VIII Comment Letter, SIFMA Comment Letter, Deutsche Comment Letter, ICI Comment Letter.

fund, commenters noted that reporting these actions would not enhance investors' ability to fully appreciate the risks of investing in a fund, potentially lead to further investor confusion and possibly even cause "disclosure fatigue" among investors.[1224] We also were asked to clarify what constitutes financial support in order to standardize disclosures by different funds.[1225]

We appreciate these commenters' concerns, and are today amending the final definition of "financial support" to minimize unnecessary filings of Form N-CR and reduce inconsistencies among different filers. In response to these comments, we are, among other things, modifying the rule text to specify that certain routine actions, and actions not reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio, do not need to be reported as financial support on Form N-CR, as discussed below.[1226] The revised definition should help avoid Form N-CR filings that do not represent actions that the Commission, shareholders, and other market observers would consider significant enough in evaluating or monitoring for financial support. Each item of financial support in the definition is the same as was proposed,

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1224 *See, e.g.*, Federated VIII Comment Letter; Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter; Chamber II Comment Letter.

1225 *See* SIFMA Comment Letter (stating that clarifying the definition of financial support is "necessary to standardize disclosures across the industry."). With respect to the "catch-all" provision of the definition, *see* discussion *infra* and *cf., e.g.,* Dreyfus Comment Letter. Certain of our final changes to the definition of "financial support" are intended to address concerns about inconsistent disclosures by different funds. *See, e.g., infra* notes 1226 and 1232 and the respective accompanying discussions.

1226 In addition, in the Proposing Release, we explained that the instructions specified that the term financial support included, but was not limited to certain examples of financial support. *See* Proposing Release, *supra* note 25, at n.617 and accompanying text. Similarly, in the proposed Form N-CR, we had included the phrase "for example" before the definition of financial support, suggesting that this definition was a non-exhaustive list of actions that constitute financial support. *See* proposed (FNAV) Form N-CR Part C; proposed (Fees & Gates) Form N-CR Part C. In the final amendments, we are eliminating these qualifications in order to reduce any ambiguity over what else might constitute sponsor support. We also clarify that the final definition encompasses the entire universe of what does (and does not) constitute financial support for purposes of Form N-CR. We believe these clarifications, in addition to our other changes to the definition of "financial support," will provide for more standardized disclosures across the industry.

except we have deleted "purchase of fund shares" from the definition, we have refined the "catch-all provision," and we have added several exclusions, all discussed below.

As we are adopting it today, the term "financial support" is defined to include (i) any capital contribution, (ii) purchase of a security from the fund in reliance on rule 17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) execution of letter of credit or letter of indemnity, (v) capital support agreement (whether or not the fund ultimately received support), (vi) performance guarantee, (vii) or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; excluding, however, any (i) routine waiver of fees or reimbursement of fund expenses, (ii) routine inter-fund lending, (iii) routine inter-fund purchases of fund shares, or (iv) any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.[1227]

As some commenters suggested,[1228] we are refining the "catch-all" provision of the financial support definition.[1229] In the Proposing Release, we had proposed to require disclosure of "any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress."[1230] Under the final definition, we are changing this provision to read: "any other similar action reasonably intended to increase or stabilize the value or liquidity

1227 *See* Form N-CR Part C. This definition is the same as the one we are adopting today for purposes of the website disclosure of sponsor support. *See supra* section III.F.3. *See also, supra* note 1214 for a description of the proposed definition in the Proposing Release.

1228 *See, e.g.*, Dreyfus Comment Letter ("we recommend that 'or otherwise support the fund during times of market stress' be eliminated from subparagraph (viii), or revised to be made more specific as to actual financial support provided. As proposed, this broad 'catch-all' provision re-opens the door for debate about what constitutes 'instances of sponsor support.'"); ICI Comment Letter.

1229 *See* Form N-CR Part C.

1230 *See* Proposing Release, *supra* note 25, at n.617 and accompanying text; proposed (FNAV) Form N-CR Part C; proposed (Fees & Gates) Form N-CR Part C.

of the Fund's portfolio."[1231] In particular, we have eliminated the phrases "otherwise support" and "during times of stress" contained in the proposed definition to address more general concerns that the "catch-all" provision was too vague and could be subject to different interpretations by different funds.[1232] We also eliminated the phrase "during times of stress" because sponsors may also provide support pre-emptively, before a fund is experiencing any actual stress. Instead, we believe this new intentionality standard[1233] should serve to reduce the chance that a fund would need to report an action on Form N-CR that does not represent true financial support that the Commission or investors would likely be concerned with. By focusing on the primary intended effects of sponsor support – increasing or stabilizing the value or liquidity of a fund's portfolio[1234] – we believe the revised "catch-all" provision will better capture actions that the Commission, shareholders, and other market observers would consider significant in evaluating or monitoring for financial support.[1235] Actions that would likely fall

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1231 *See* Form N-CR Part C.

1232 *See* Dreyfus Comment Letter. *See generally, e.g.,* SIFMA Comment Letter (with respect to definition of financial support generally, stating that clarifications are "necessary to standardize disclosures across the industry."). *But cf.*, ICI Comment Letter (proposing a modified "catch-all" provision that would retain the phrase "during periods of stress.").

1233 *See* Form N-CR Part C. As noted above, if increasing or stabilizing the value or liquidity of the Fund's portfolio is an intended effect of an action, even if not the primary purpose, then it would need to be reported on Form N-CR.

1234 To that end, we have also added "or stabilize" and "or liquidity" to what we had originally proposed as the catch-all provision. *See supra* note 1231 and accompanying text. We are doing so because we believe that increasing the value of a fund may not be the only primary intended effect of financial support. Rather, we believe that stabilizing the value of a fund (*e.g.*, where a sponsor provides support to counter foreseeable adverse market effects that may otherwise depress the fund's value), as well as increasing or stabilizing the fund's liquidity (*e.g.*, where a sponsor might exchange securities with longer maturities for ones of equal value but with shorter maturities) may also be intended effects of financial support.

1235 We also considered whether to make this "catch-all" provision (or the definition of financial support generally) subject to a specific threshold or general materiality qualification. *See, e.g.,* T. Rowe Price Comment Letter (stating that "if the sponsor is investing in its own fund in order to support the NAV, we agree that the SEC could consider requiring disclosure [on Form N-CR] if a money market fund's NAV has dropped below a certain threshold and the sponsor's investment in the fund materially changes the market-within this "catch-all" provision include, for example, the purchase of a defaulted or devalued security at a price above fair value, or exchanges of securities with longer maturities for ones with shorter maturities.

We have also added exclusions to the definition in a change from the proposal. The revised definition of financial support explicitly excludes routine waivers of fees or reimbursement of fund expenses, routine inter-fund lending, and routine inter-fund purchases of fund shares.[1236] We agree with commenters that the actions we are excluding from the final definition are not generally indicative of stress at a fund.[1237] Correspondingly, we have also deleted purchases of fund shares as one of the items that had been explicitly included in the proposed definition.[1238] We note that these actions must be "routine" meaning that any such actions are excluded only to the extent they are not reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.[1239]

The final definition of financial support also includes a new intentionality exclusion that may be invoked by boards.[1240] Under this new exclusion, a particular action need not be reported

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based NAV."); *Cf., e.g.,* ICI Comment Letter (among other things, proposing to qualify purchases of fund shares by adding "to support the fund during periods of stress (e.g., when the fund's NAV deviates by more than ¼ of 1 percent)" behind it). However, we are not including a specific threshold (*e.g.*, a specific drop in the fund's NAV or liquidity) at this time (to the "catch-all" provision or any other part of the definitions) because not all types of sponsor support (*e.g.*, a capital support agreement or performance guarantee) may result in an immediate change in a fund's NAV or liquidity. The utility of the reporting might also be diminished with such a threshold if sponsors provided support pre-emptively, before the specified threshold is met.

1236 *Cf., e.g.*, ICI Comment Letter (proposing to add "nonroutine" before "purchase of fund shares" to "make it clear that routine affiliate purchases normally should not be deemed "financial support.").

1237 *See generally,* commenters' concerns at *supra* note 1223 and accompanying discussion.

1238 *See* clause (iv) of the proposed definition, *supra* note 1227.

1239 If increasing or stabilizing the value or liquidity of the Fund's portfolio is an intended effect of an action, even if not the primary purpose, then it would need to be reported on Form N-CR.

1240 *See* Form N-CR Part C.

as financial support under Part C of Form N-CR if the board of directors of the fund finds that the action was not "reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio." We are adding this exclusion as a way to address certain remaining concerns by commenters about the reporting of actions that might otherwise still technically fall within the definition of financial support, but are not intended as such.[1241] During times of fund or market stress, however, we believe that boards likely would find it difficult to determine that a particular action that is otherwise captured by the definition of financial support should be excluded under this intentionality exception. We recognize that an action may be made for a number of reasons, but note that if an intent of the action is to increase or stabilize the value or liquidity of the Fund's portfolio, even if that is not the primary or sole purpose of the action, then it must be reported on the Form.[1242] As is the case with any board determination, boards would typically

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1241 *See, e.g.,* Fidelity Comment Letter ("For example, '(i) any capital contribution' could be interpreted to include a reimbursement of error, as a MMF adviser or sponsor may reimburse a MMF for an error that occurred whether part of investment operations, investment activity or other services provided by a service provider to the funds.") In such a case, a fund's board might be able to determine that such reimbursement was not "reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio" and thus would not report the action on Form N-CR.

1242 For example, a sponsor might purchase a security from a fund (or take another similar action) to eliminate potential future risk associated with that security, and may engage in such an action primarily out of concern for their reputation or other reasons. Nonetheless, if any intent of the action, even if it is not the primary intent, is to increase or stabilize the value or liquidity of the fund's portfolio (in the present or future), then such an action would be reportable on Form N-CR. Similarly, one commenter suggested that we exclude certain capital contributions provided by the sponsor of an acquired fund in the case of a merger or reorganization from the definition of financial support for purposes of Form N-CR. *See* Federated VIII Comment Letter. We have not done so because in some cases such a contribution might be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio, even if the primary intent was to facilitate the merger or reorganization. In particular, such a contribution may qualify as a "capital contribution" for purposes of clause (i) of the proposed definition of financial support. Given that the capital contribution in the commenter's example was intended to cover "any net losses previously realized by the acquired fund" or "if the shadow price of the acquired fund differs materially from the acquiring fund's shadow price," the recipient fund's board would likely find it difficult to conclude that such a capital contribution was not reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio. *Id.*

record in the board minutes the bases of any such determinations by the board.[1243]

b. Amount of Support

In the Proposing Release, we proposed that filers disclose, among other things, the "amount of support" in Part C of Form N-CR.[1244] One commenter asked the Commission to clarify the "amount" of financial support that they must report under Part C of the form to avoid misleading disclosures and to facilitate comparability in disclosures across the industry.[1245] For example, in the case of a purchase of a security from the fund, this commenter believed that it may be misleading to report the size of the position purchased as the "amount" supported and rather thought the amount of support should be the increase in the fund's NAV that results from the purchase. This commenter also asked that the Commission clarify that SEC staff interpretations relating to reporting the valuation of capital support agreements on Form N-MFP would be applicable for these purposes.[1246]

Below we are providing guidance to clarify what amounts should be reported specifically with respect to share purchases on Part C of Form N-CR. With respect to share purchases in particular, we disagree with the commenter that when financial support is provided through the purchase of a fund portfolio security, the size of the security position purchased is not relevant in considering the amount of support. When a distressed or potentially distressed security is purchased out of a fund's portfolio, support can be provided in two ways. First, if it is purchased

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1243 *See supra* note 709.

1244 *See* proposed (FNAV) Form N-CR Item C.6; proposed (Fees & Gates) Form N-CR Item C.6.

1245 *See* SIFMA Comment Letter.

1246 This commenter was discussing Staff Responses to Questions about Rule 30b1-7 and Form N-MFP updated July 29, 2011, available at http://www.sec.gov/divisions/investment/guidance/formn-mfpqa.htm.

at amortized cost and the security's market-based value is below amortized cost, one measure of the amount of support is the amount of the security's impairment below amortized cost. However, the purchase of the security position from the fund also removes this entire risk exposure from the fund and protects the fund from subsequent further price declines in the security. Accordingly, we believe that the size of the position purchased from the fund is also relevant when considering the "amount" of financial support. Therefore, in such a case filers should report under Part C of Form N-CR the following two separate items with respect to the "amount" of financial support: (i) the amount of the impairment below amortized cost in the security purchased and (ii) the amortized cost value of the securities purchased.

In the case of a capital support agreement, historically such agreements have supported a particular security position while others, as noted by a commenter, may support the market-based NAV per share of the fund as a whole.[1247] Where a capital support agreement is supporting a particular security position, we would consider the amount of reportable financial support on Form N-CR similar to that described above relating to purchases of portfolio securities. That is, the "amount" of financial support is the amount of security impairment effectively removed through the capital support agreement as well as the amortized cost value of the overall position supported (assuming the entire position is subject to the capital support agreement). For a capital support agreement that supports the fund as a whole, the amount of reportable financial support is the amount of impairment to the fund's NAV per share effectively removed through the capital support agreement with a notation describing that the capital support agreement supports the value of the fund as a whole (or the extent of the fund's value that is supported, if less than the

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[1247] *See* SIFMA Comment Letter.

full amortized cost value).

This guidance differs somewhat from the staff guidance relating to capital support agreement disclosures on Form N-MFP because the context differs. Form N-MFP already requires reporting on the overall size of the security position reported (and information about the size of the fund), so the additional capital support agreement reporting focuses on valuing the impairment effectively removed through the capital support agreement. Our guidance regarding "amount" of financial support reportable on Form N-CR for capital support agreements thus provides similar information to that which could be collectively determined by reviewing various Form N-MFP line items.

c. Concerns over Potential Redundancy

One commenter argued that the financial support disclosure in Form N-CR is redundant in light of the corresponding financial support disclosures in the SAI, raising concerns about the additional preparation costs and burdens on fund personnel.[1248] More generally, commenters were also concerned about the redundancy of various other Parts of Form N-CR, Form N-CR as a whole, and even the various proposed disclosures in the aggregate.[1249] While we appreciate these concerns and have considered the costs and burdens of Form N-CR,[1250] we note that each of the Form N-CR and the corresponding website and SAI disclosure requirements serves a distinct purpose.[1251] Therefore, although we acknowledge there will be some textual overlap between

1248 *See* Dreyfus Comment Letter.

1249 *See, e.g.,* Dreyfus Comment Letter; SIFMA Comment Letter; Federated II Comment Letter; Fin. Svcs. Roundtable Comment Letter.

1250 We consider and estimate the various costs and burdens of Form N-CR in more detail in *infra* section III.F.8 as well as in *infra* section IV.D.2.a.

1251 We note that there are also certain overlapping disclosures with respect to Form N-MFP, which we these different formats, we believe there are strong public policy reasons for requiring the various different disclosures. We also note that we have required other such parallel reporting for similar reasons.[1252]

Most significantly, Form N-CR will alert Commission staff, shareholders and other market observers about any reportable events on Form N-CR (including any financial support) on a near real-time basis.[1253] In particular, Form N-CR will enable the Commission and other market observers to better monitor the entire fund industry, as they will be able to locate on EDGAR all Form N-CR reports specific to any particular time frame without having to search through the SAIs of all the funds in the industry. We expect financial news services to be among the market observers who will benefit from Form N-CR, which in turn could then also alert investors about these important developments more expeditiously.[1254] Although any corresponding SAI disclosures will also be available on EDGAR, because SAI filings contain many other disclosures (including those unrelated to financial support or the other reportable events on Form N-CR), it could take significant amounts of time for the Commission and other market observers (such as the aforementioned financial news services) to continually review all

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generally discuss in *supra* section III.G.

1252 For example, money market funds are currently required to disclose much of the portfolio holdings information they disclose on Form N-MFP on the fund's website as well. *See* current rule 2a-7(c)(12)(ii); current rule 30b1-7; Form N-MFP, General Instruction A.

1253 With respect to the need of the Commission staff, shareholders and other market observers to receive the alerts on Form N-CR on a near real-time basis, *cf. infra* notes 1329-1333 and the accompanying text for a discussion on the importance of the one and four business day deadlines of Form N-CR.

1254 As noted in *supra* notes 1211 and 1213, with respect to any portfolio defaults or fund share purchases under rule 17a-9, we are eliminating the corresponding email notifications to the Director of Investment Management or the Director's designee under current rules 2a-7(c)(7)(iii)(A) and (B). Among other reasons, we are replacing them with Form N-CR is because these email notifications are currently not publicly available to investors and other market observers.

SAI filings for any relevant alerts.[1255] Similarly, we believe it would be significantly more time-consuming, if not impractical, if the Commission and other market observers had to continually check each fund's website for any relevant updates.[1256] We therefore believe that the corresponding website and SAI disclosures alone would not accomplish the primary goal of Form N-CR in alerting the Commission, investors and other market observers about important events in a timely and meaningful manner. Moreover, we note that certain Parts of Form N-CR as amended today will require more extensive disclosures than either the corresponding website or SAI disclosures,[1257] which further minimizes the degree to which there would have been any functionally overlapping disclosures. Finally, Form N-CR filings will also provide a permanent historical record of any financial support provided to the entire money market fund industry, which will be accessible on EDGAR.

On the other hand, we believe that the consolidated discussion in the SAI will be the most accessible format for disclosing historical instances of sponsor support in the past 10 years, as it would be a significant burden on the Commission, investors and other market observers if they

1255 Even where a fund updates its registration statement with equal promptness as Form N-CR, as noted by the commenter cited below, it would still likely take the Commission and other market observers extensive effort and time to continually review all SAI filings for any relevant alerts. *See* Dreyfus Comment Letter (stating that "[w]hile the Commission may feel that Form N-CR will provide the information on a more real-time basis, we expect registration statements also will have to be updated with equal promptness with these disclosures (via Rule 497 filings with the Commission)."). In addition, as discussed below, we note that certain Parts of Form N-CR as amended today will require more extensive disclosures than either the corresponding website or SAI disclosures.

1256 Such website monitoring could be particularly burdensome because the presentation of this information would likely be different on each fund's website.

1257 For example, with respect to disclosure of any financial support, funds will be required to disclose on their websites and in their SAIs only that information that the fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N-CR. *See supra* notes 993 and 1137-1138 and accompanying text. We also note that Parts E, F, and G of Form N-CR as amended today will require more extensive disclosures than the rule 2a-7 and Form N-1A provisions requiring funds to disclose certain information about the imposition of fees or gates on the fund's website and in the fund's SAI. *See supra* notes 960 and 1112 and accompanying text.

had to review various prior Form N-CR filings to piece together a specific fund's history of sponsor support,[1258] even in light of the additional costs and burdens faced by funds in providing these SAI disclosures.[1259] We also believe that, to the extent investors may not be familiar with researching filings on EDGAR, including these disclosures in a fund's SAI (which investors may receive in hard copy through the U.S. Postal Service or may access on a fund's website, as well as accessing on EDGAR) may make this information more readily available to these investors than disclosure on other SEC forms that are solely accessible on EDGAR.

Similarly, the website disclosures are intended to be more accessible than Form N-CR for individual investors interested in information about particular funds, in particular to the extent such investors may not be familiar with researching filings on EDGAR.[1260] Given that individual investors are typically most interested in information about their own (or potential) investments and do not necessarily monitor the entire fund industry, visiting the websites of a few particular funds would likely not become overly time-consuming or burdensome for these investors.[1261]

4. *Part D: Declines in Shadow Price*

Part D of Form N-CR will, as proposed, require funds that transact at a stable price to file a report when the fund's current NAV per share deviates downward from its intended stable

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[1258] Given that funds will be required to disclose historical instances of sponsor support for the past 10 years, the corresponding filings on Form N-CR will provide a permanent record for any instances of financial support that occurred more than 10 years ago in a single place.

[1259] We generally consider and estimate the costs and burdens of the SAI disclosures in *infra* sections III.F.8 and IV.G.

[1260] *See* CFA Institute Comment Letter ("We particularly endorse the proposed requirement that money market funds would have to post on their websites much of the information required in Form N-CR. While Form N-CR information is publicly available upon SEC filing, investors will more readily find and make use of this information if posted on a particular fund's website.")

[1261] We also generally consider and estimate the costs and burdens of the related website disclosures in *infra* section III.F.8 as well as in *infra* section IV.A.6.

price (generally, \$1.00) by more than ¼ of 1 percent (*i.e.,* generally below \$0.9975).[1262] Today we are adopting Part D of Form N-CR largely as proposed.[1263] As we discussed in the Proposing Release,[1264] this requirement will not only permit the Commission and others to better monitor indicators of stress in specific funds or fund groups and in the industry, but also will help increase money market funds' transparency and permit investors to better understand money market funds' risks.[1265] To better understand the cause of such a decline in the fund's shadow price, we are also requiring, largely as proposed, funds to provide the principal reason or

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1262 Form N-CR Part D. As stated in the introduction to Part D, with some changes from the proposal, the disclosure requirement under Part D is triggered "[if] a retail money market fund's or a government money market fund's current net asset value per share deviates downward from its intended stable price per share by more than ¼ of 1 percent [...]." In turn, for each day the fund's current NAV is below this threshold, Part D will require, with some changes from the proposal, a fund to disclose the following information: (i) the date or dates on which such downward deviation exceeded ¼ of 1 percent; (ii) the extent of deviation between the fund's current NAV per share and its intended stable price; and (iii) the principal reason or reasons for the deviation, including the name of any security whose market-based value or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event) has contributed to the deviation.

1263 *See* proposed (FNAV) Form N-CR Part D; proposed (Fees & Gates) Form N-CR Part D. Under either main alternative, in the Proposing Release we proposed Form N-CR to require an applicable fund, if its current NAV (rounded to the fourth decimal place in the case of a fund with a \$1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than ¼ of 1 percent, to disclose the following information: (i) the date or dates on which such deviation exceeded ¼ of 1 percent; (ii) the extent of deviation between the fund's current NAV per share and its intended stable price; and (iii) the principal reason for the deviation, including the name of any security whose market-based value or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event) has contributed to the deviation. *See* Proposed (FNAV) Form N-CR Part D; Proposed (Fees & Gates) Form N-CR Part D. In addition to the other change discussed in this section, we are making various conforming and clarifying changes in the final amendments to Part D. In the introduction to Part D, in a conforming change to the other amendments we are adopting today, we are now referring to retail and government money market funds instead of just to "Fund" as proposed under the floating NAV alternative or to funds "subject to the exemption provisions of rule 2a-7(c)(2) or rule 2a-7(c)(3)" as proposed under the liquidity fees and gates alternative). We are also pluralizing the "principal reason" in Item D.3 to principal reason or reasons," as there may be several successive or concurrent causes that resulted in a reduction in the shadow NAV. Furthermore, as another conforming change, we are inserting the word "downward" before "deviation" in Item D.1 to remove any doubt that only downward deviations need to be reported, consistent with the introduction of Part D (which already includes a reference to "downward").

1264 *See* Proposing Release, *supra* note 25, at text accompanying n.714.

1265 *See generally, supra* section III.B.8.a (discussing the potential benefits and costs of the requirement for a money market fund to disclose its current NAV on its website).

reasons[1266] for the reduction, which would involve identifying the particular securities or events that prompted the decline.[1267] In a change from the proposal, we are also requiring the disclosure of the same identifying information included in other parts of the Form.[1268] In particular, the final amendments to Item D.3 also now require funds to report the name of the issuer, the title of the issue and at least two identifiers, if available.[1269] In particular, better identification of the particular fund portfolio security or securities that may have prompted a shadow price decline will facilitate the staff's monitoring and analysis efforts, which we expect to help us better understand the nature and extent of the shadow price decline, the potential effect on the fund, potential contagion risk across funds more broadly, as well as inform any action that may be required in response to the risks posed by such an event. Fund shareholders and potential investors will similarly benefit from the clear identification of a fund portfolio security or securities that may have prompted a shadow price decline when evaluating their investments.[1270]

Some commenters expressed concerns about the reporting of shadow price declines on Form N-CR. For example, commenters argued that it would be redundant and unduly

1266 In a change from the Proposing Release, we are pluralizing the "principal reason" in Item D.3, as there may be several successive or concurrent causes that resulted in a reduction in the shadow NAV.

1267 Form N-CR Item D.3. This item would not require additional analysis or explanation of the principal reason or reasons for the deviation, beyond identifying the particular securities or events that prompted the deviation.

1268 *See* Form N-CR Item D.3 (requiring, for any such security, disclosure of the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available); *see* Form N-CR Item B.1.

1269 These changes are similar to what we proposed and are adopting with respect to Items C.1 to C.5 of Form N-MFP. *See* Proposing Release, *supra* note 25, at nn.754-757 and accompanying text; *see supra* section III.G.2.f. As under Form N-MFP and with respect to Item B.1, we note that the requirement to include multiple identifiers is only required if such identifiers are actually available.

1270 With respect to our corresponding changes to Parts B and C of Form N-CR, *see also*, *supra* notes 1209 and 1216 and the accompanying discussions.

burdensome in light of funds' concurrent website disclosure of the shadow price.[1271] However, as already discussed with respect to the various concurrent disclosures of financial support in section III.F.3 above, while we are sensitive to commenters' concerns about duplication, we believe it appropriate given the different audiences and uses for such information.[1272]

With respect to the particular deviation threshold of ¼ of 1 percent that we are adopting today as proposed, one commenter considered this level of deviation to be arbitrary, "as there are no other implications under Rule 2a-7 for the money market fund if it has a 25 basis point deviation."[1273] However, as noted in the Proposing Release,[1274] we continue to believe that a deviation of ¼ of 1 percent is sufficiently significant that it could signal future, further deviations in the fund's NAV that could require a stable price fund's board to consider re-pricing the fund's shares (among other actions). We note that we previously have similarly determined that a ¼ of one percent decline in the shadow price from its intended stable price is an appropriate threshold requiring money market funds to report to us.[1275] Moreover, if a Form N-CR filing were not triggered until a higher threshold such as after a fall in the NAV that would require the re-pricing of fund shares (such as 0.5%),[1276] the disclosures would come too late to meaningfully allow the Commission and others to effectively monitor and respond to indicators of stress. We also

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1271 *See* Federated VIII Comment Letter (stating that "so long [a]s the current shadow price is publicly available, Federated does not view such a deviation as a material event that necessitates a separate reporting."); Dreyfus Comment Letter.

1272 *See* discussion following *supra* notes 1248 and 1249 and accompanying text.

1273 *See* Federated VIII Comment Letter.

1274 *See* Proposing Release, *supra* note 25, at n.715 and accompanying text.

1275 *See* rule 30b1-6T (interim final temporary rule (no longer in effect) requiring money market funds to provide the Commission certain weekly portfolio and valuation information if their market-based NAV declines below 99.75% of its stable NAV).

1276 *See* Federated VIII Comment Letter (proposing a deviation of 0.5% as the reporting trigger).

believe a threshold of ¼ of 1 percent strikes an appropriate balance with respect to the frequency of filings, because during periods of normal market activity we would expect relatively few Form N-CR filings for this part of the form.[1277] In fact, our staff has analyzed Form N-MFP data from November 2010 to February 2014 and found that only one fund had a ¼ of 1 percent deviation from the stable $1.00 per share NAV, suggesting the burden to funds would be minimal during normal market activity. We note that funds may also provide additional context about the circumstances leading to the shadow price decline in Part H of Form N-CR, discussed below.

Another commenter suggested that disclosure of a deviation in the NAV might result in an increase in pre-emptive run risk, as shareholders could come to use these filings as a trigger for redemptions.[1278] Although we cannot predict individual shareholder actions with certainty, as discussed previously, we believe that the transparency provided by this information is important to the ability of money market fund shareholders to understand and assess the risks of their investments. Furthermore, while we acknowledge the possibility of pre-emptive redemptions, some of the other reforms we are adopting today (such as liquidity fees and redemption gates) will provide some fund managers additional tools for managing such redemptions, if they were to occur. We also note that some of our responses in section III.A.1.c.i to concerns over pre-emptive run risk related to the liquidity fees and gates requirement would similarly apply to

1277 *Cf.*, *e.g.*, State Street Comment Letter at Appendix A ("During the September 2008 failure of Lehman Brothers Holdings, a large number of money market funds had a ¼ of 1% or greater deviation between the amortized-cost NAV and the market NAV. During times of market stress similar to the 2008 crisis, our expectation is that the percentages would be similar. However, during times of normal market activity, our expectation is that [a ¼ of 1%] or greater deviation between stable NAV and market NAV would be infrequent.")

1278 *See* Federated VIII Comment Letter.

run risk concerns over the disclosure of a deviation in the NAV in Part D of Form N-CR.[1279] More generally, we expect that Form N-CR could decrease, rather than increase, redemption risk by heightening self-discipline at funds.[1280]

5. *Parts E, F, and G: Imposition and Lifting of Liquidity Fees and Gates*

Today we are adopting a requirement that a money market fund file a report on Form N-CR when a fund imposes or lifts a liquidity fee or redemption gate, or if a fund does not impose a liquidity fee despite passing certain liquidity thresholds.[1281] As discussed in more detail below, we are making some changes from what we proposed.[1282] This report, as adopted, will

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1279 For example, as discussed in further detail in section III.A.1.c.i, we expect that the additional discretion we are granting fund boards to impose a fee or gate at any time after the fund's weekly liquid assets have fallen below the 30% required minimum should substantially mitigate the risk of pre-emptive redemptions. As discussed in *supra* note 171 and the accompanying text, board discretion concerning when to impose a fee or gate may reduce shareholder incentive to pre-emptively redeem shares, because shareholders will be less able to accurately predict specifically when, and under what circumstances, fees and gates will be imposed. *See* Wells Fargo Comment Letter; *see also* Proposing Release, *supra* note 25, at n.362. For similar reasons, we believe that it is less likely that investors would use these filings under Part D of Form N-CR as a trigger for redemptions in the first place.

1280 *See* American Bankers Ass'n Comment Letter (noting that certain disclosures including Form N-CR "would exert a discipline on fund advisers to manage assets so conservatively as to avoid raising concerns among investors about the credit quality of fund investments that could lead to heavy redemptions."). *See also, infra* note 1346-1350 and the accompanying text for our additional discussion of concerns over widespread redemption risk as a result of Form N-CR.

1281 *See* Form N-CR Parts E, F, and G.

1282 *See* proposed (Fees & Gates) Form N-CR Parts E, F, and G. In particular, in the Proposing Release, if, at the end of a business day, a fund (except any government money market fund that has chosen to rely on the proposed (Fees & Gates) rule 2a-7 exemption) has invested less than 15% of its total assets in weekly liquid assets, we proposed to require the fund to disclose the following information: (i) the initial date on which the fund's weekly liquid assets fell below 15% of total fund assets; (ii) if the fund imposes a liquidity fee pursuant to proposed (Fees & Gates) rule 2a-7(c)(2)(i), the date on which the fund instituted the liquidity fee; (iii) a brief description of the facts and circumstances leading to the fund's weekly liquid assets falling below 15% of total fund assets; and (iv) a short discussion of the board of directors' analysis supporting its decision that imposing a liquidity fee pursuant to proposed (Fees & Gates) rule 2a-7(c)(2)(i) (or not imposing such a liquidity fee) would be in the best interests of the fund. Proposed Part E further included instructions that a fund must file a report on Form N-CR responding to items (i) and (ii) above on the first business day after the initial date on which the fund has invested less than fifteen percent of its total assets in weekly liquid assets, and that a fund must amend its initial report on Form N-CR to respond to items (iii) and (iv) above by the fourth business day after the initial date on which the fund has invested less than fifteen percent of its total assets in weekly liquid assets. *See* proposed (Fees & Gates) Form N-CR require a description of the primary considerations the board took into account in taking the action (modified from the proposal and discussed below), as well as certain additional basic information, such as the date when the fee or gate was imposed or lifted, the fund's liquidity levels, and the size of the fee.[1283] Except for the change to the requirement to describe the primary considerations the board took into account in taking the action, the other changes to Parts E, F and G generally derive from the amendments to the liquidity fees and gates requirements that are being adopted today and are designed to conform these Parts of Form N-CR to those operative requirements. These changes are discussed below.[1284]

As we noted in the Proposing Release, we believe that the items required to be disclosed are necessary for investors and us better to understand the circumstances leading to the imposition or removal of a liquidity fee or redemption gate, or the decision not to impose one

Part E.

Similarly, a fund (except any government money market fund that has chosen to rely on the proposed (Fees & Gates) rule 2a-7 exemption) that has invested less than 15% of its total assets in weekly liquid assets (as provided in proposed (Fees & Gates) rule 2a-7(c)(2)) suspends the fund's redemptions pursuant to rule 2a-7(c)(2)(ii), we proposed that the fund disclose the following information: (i) the initial date on which the fund's weekly liquid assets fell below 15% of total fund assets; (ii) the date on which the fund initially suspended redemptions; (iii) a brief description of the facts and circumstances leading to the fund's weekly liquid assets falling below 15% of total fund assets; and (iv) a short discussion of the board of directors' analysis supporting its decision to suspend the fund's redemptions. Proposed Part F further included instructions providing that a fund must file a report on Form N-CR responding to items (i) and (ii) above on the first business day after the initial date on which the fund suspends redemptions, and that a fund must amend its initial report on Form N-CR to respond to items (iii) and (iv) by the fourth business day after the initial date on which the fund suspends redemptions. *See* proposed (Fees & Gates) Form N-CR Part F.

Finally, if a fund (except any government money market fund that has chosen to rely on the proposed (Fees & Gates) rule 2a-7 exemption) that has imposed a liquidity fee and/or suspended the fund's redemptions pursuant to proposed (Fees & Gates) rule 2a-7(c)(2) determines to remove such fee and/or resume fund redemptions, we proposed to require funds to disclose, as applicable, the date on which the fund removed the liquidity fee and/or resumed fund redemptions. *See* proposed (Fees & Gates) Form N-CR Part G.

1283 *See* Form N-CR Parts E, F, and G. We note that a fund would file a new Part E filing of Form N-CR if it were to change the size of its liquidity fee after its initial imposition. Observers will also be able to determine the duration of any gate by comparing initial filings of Part F (suspension of redemptions) with filings of Part G (lifting of such suspensions).

1284 *Also see infra* note 1313 for a discussion of our related conforming changes and clarification to Form N-CR.

despite a reduction in liquidity.[1285] We believe such a better understanding will in turn enhance the Commission's oversight of the fund and regulation of money market funds generally,[1286] and could inform investors' decisions to purchase shares of the fund or remain invested in the fund.[1287]

a. Board Disclosures

A number of commenters objected to the proposed requirement that funds provide a "short discussion of the board of director's analysis supporting its decision" [1288] whether or not to impose liquidity fees or when imposing redemption gates.[1289] Many of these commenters raised concerns that the disclosures might chill deliberations among board members, hinder board confidentiality and encourage opportunistic litigation.[1290] More generally, commenters also challenged the materiality or usefulness of the board disclosures to investors.[1291] For example, one commenter stated that although "whether the fund is imposing a liquidity fee or suspending

1285 *See* Proposing Release, *supra* note 25, at text following n.719.

1286 For example, by knowing the reason(s) for why a board imposed a liquidity fee or gate, we expect to be able to better understand the potential cause(s) that led to a fund experiencing stress, which could inform our determination as to whether further regulatory or other action on our part is warranted.

1287 Government money market funds which are not subject to our fees and gates requirements and which have not opted to apply them are exempt from the reporting requirements of parts E, F, and G of Form N-CR.

1288 *See* proposed (Fees & Gates) Form N-CR Item E.4 and Item F.4.

1289 *See, e.g.,* Dreyfus Comment Letter; Legg Mason & Western Asset Comment Letter; MFDF Comment Letter; NYC Bar Committee Comment Letter; SIFMA Comment Letter.

1290 *See, e.g.,* Dreyfus Comment Letter (noting that "[t]his analysis will implicate significant amounts of confidential information, including the identity of shareholders and future expectations about investment flows."); NYC Bar Committee Comment Letter (noting that this "disclosure would subsequently be reviewed with the benefit of hindsight and could be used against the board and the fund in the sort of opportunistic litigation that follows any financial crisis."); Legg Mason & Western Asset Comment Letter; MFDF Comment Letter; Stradley Ronon Comment Letter. In addition, one commenter stated that "[o]utside of the advisory contract approval process, for which there is a statutory basis under Section 15(c) of the 1940 Act, the Commission has respected the confidentiality of board deliberations and findings that are recorded in board minutes." *See* Dreyfus Comment Letter.

1291 *See, e.g.,* Legg Mason & Western Asset Comment Letter; NYC Bar Committee Comment Letter; Stradley Ronon Comment Letter; SIFMA Comment Letter.

redemptions" would be material, the board's underlying analysis would not be.[1292] Some commenters also expressed concern that such disclosure would set a precedent for board disclosures in other contexts.[1293]

We appreciate these concerns, but we believe that the imposition of a fee or gate is likely to be a very significant event for a money market fund[1294] and information about why it was imposed may prove pivotal to shareholders, many of whom may be evaluating their investment decision in the money market fund at that time.[1295] Accordingly, as discussed in the Proposing Release, we continue to believe that shareholders have a strong interest in understanding why a board determined to impose (or not to impose) a liquidity fee or gate.[1296] For example, this information may enable investors to better understand the events that are affecting and potentially causing stress to the fund.[1297] This information may also permit investors to confirm

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1292 *See* Legg Mason & Western Asset Comment Letter.

1293 *See, e.g.*, SIFMA Comment Letter (stating that "a requirement to disclose the board's analysis that is otherwise memorialized in fund minutes is unique, outside of advisory contract approval. We oppose setting a precedent that could imply that board analysis must be publicly disclosed for each important decision made for a fund."); MFDF Comment Letter; Dreyfus Comment Letter.

1294 Our conclusion that the imposition of a fee or gate may often be a significant event for a money market fund is supported by the view of many commenters that the imposition of a fee or gate could have significant implications for a fund that takes this step and that investors may engage in heavy redemptions after a fee is imposed or a gate is lifted. *See, e.g.,* supra notes 189 and 190 and accompanying text.

1295 We note that disclosure of board reasoning is not uncommon in context where shareholders may be evaluating their investment decision, such as when a fund engages in a merger or acquisition. In those circumstances, a fund board usually provides a recommendation to shareholders and the reasons for their recommendation. *C.f., e.g.,* Independent Directors Council, BOARD CONSIDERATION OF FUND MERGERS, (June 2006), *available at* http://www.idc.org/pdf/ppr_idc_fund_mergers.pdf ("Directors typically explain the reasons for their decision to recommend that shareholders approve a merger in the fund's proxy statement."). We note that mergers and acquisitions can also be the subject of litigation and nevertheless board disclosure of their primary reasons for their recommendation is commonplace.

1296 *See* Proposing Release, *supra* note 25, at section III.G.2.

1297 *Cf., e.g.,* MFDF Comment Letter (acknowledging that "[d]epending on the situation, fund investors may well have an interest in better understanding the circumstances that led to the imposition of redemption fees or gates.").

that the board is, as our rule requires, acting in the best interests of the fund.[1298] And given that under our final rules a board can impose a fee or gate as soon as the fund's weekly liquid assets fall below the 30% regulatory minimum (and thus different boards may impose fees or gates at different times), investors' interest in understanding the board's reasoning is likely to be even more important.[1299] For these reasons, we believe this disclosure will convey material information to those investors who are considering whether to redeem their shares in response to a fee or gate.

With respect to concerns that the board disclosures set a precedent implying that the reasoning underlying every other important decision taken by the board should be similarly disclosed,[1300] we disagree. As discussed in section II.A, ready access to liquidity is one of the hallmarks that has made money market funds popular cash management vehicles for both retail and institutional investors. Because liquidity fees and redemption gates could affect this core feature by potentially limiting the redeemability of money market fund shares under certain conditions,[1301] we believe the decision whether to impose those measures is sufficiently different in kind from most other significant decisions a board could make that the disclosures required by the rule would not be a precedent for broadly requiring the disclosure of boards' rationales in other contexts.

In addition, we have amended this disclosure requirement to address some of the

1298 *See, e.g.,* ABA Business Law Section Comment Letter (with respect to the liquidity fees and gates proposal, stating that the "Commission would assign the money market fund's board of directors substantial new responsibilities over 'life and death' decisions in the event of a run on the fund.").

1299 *See supra* section III.A.1.b.iii.

1300 *See* discussion of SIFMA Comment Letter at *supra* note 1293.

1301 *See supra* section III.A.1.b.iii. *See also supra* notes 196-199 and the accompanying text for a discussion of commenters' concerns of the potentially detrimental effects of a liquidity fee or gate.

commenters' concerns, while still eliciting useful information for the Commission and investors. More specifically, we are revising Form N-CR to require disclosure of a brief discussion of the "primary considerations or factors taken in account by the board of directors in its decision" to impose or not impose a liquidity fee or gate.[1302] One commenter suggested we make a similar change, requiring disclosure of "a list of material factors considered by the board in making its determination."[1303] Rather than just a list of material factors, however, we believe it important that funds provide a more substantive, but brief, discussion of the primary considerations or factors taken in account by the board, so that our staff and investors better understand why the board determined they were important. This report would not need to include every factor considered by the board, only the most important or primary ones that shaped the determination of the board's action. This should help alleviate commenters' concerns that funds would need to provide lists of all possible factors or dissect a board's internal deliberations. Instead, we would expect only a description of the primary considerations or factors leading to the action taken by the board, and a brief discussion of each.

That said, we caution that in preparing these board disclosures, funds should avoid "boilerplate" summaries of all possible factors in addition to or in lieu of a more substantive narrative.[1304] Instead, filers generally should provide information that is tailored to their fund's particular situation and the context in which their board's decision was made. In preparing these filings, funds should consider discussing present circumstances as well as any potential future

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1302 *See* Form N-CR Part E.6 and Part F.4.

1303 *See* NYC Bar Committee Comment Letter.

1304 *Cf., e.g.,* SIFMA Comment Letter (stating that the discussion of the board's analysis "will likely be tailored to preempt shareholder plaintiffs' counsel who might target boards for liability in connection with their decisions." which "... may encourage lengthy, but not necessarily useful, disclosure.").

risks and contingencies to the extent the board took them into account. We also note that we provided a non-exhaustive list of possible factors that a board may have considered in imposing a liquidity fee or gate in section III.A.2.b above.[1305]

Another commenter argued that the board disclosures themselves might incite widespread redemptions, particularly where the board considered but chose not to impose a liquidity fee.[1306] As discussed in section III.A.1.c above, we acknowledge the possibility that the prospect of a liquidity fee or gate may cause pre-emptive redemptions, but we believe that several aspects of our final reforms both make pre-emptive runs less likely and substantially mitigate their broader effects if they occur. In addition, we believe disclosure of a board's reasoning is particularly important in times of stress in order to mitigate against investor flight to transparency that might otherwise occur.[1307]

Finally, we received comments discussing concerns about potentially duplicative disclosures, in particular the possible redundancy of the board disclosures on a fund's website as well as Form N-CR.[1308] However, as already discussed with respect to the various concurrent

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1305 *See supra* section III.A.2.b.

1306 *See* Federated V Comment Letter. *But cf., e.g.*, American Bankers Ass'n Comment Letter (arguing that the disclosures of Form N-CR more generally will decrease redemption risk by heightening self-discipline at funds).

1307 Moreover, with respect to a fund whose weekly liquid assets have dropped below 10%, we might be concerned that such a fund may imminently become unable to meet redemptions. Such a relative lack of liquidity at one fund could also be an indicator of larger effects that might spread to other funds. Either scenario may raise concerns that further action by the Commission is warranted. However, if the particular fund's board waived the liquidity fee, the related disclosure thereof (*e.g.*, because the drop in liquidity is temporary and only related to the particular fund) could inform our determination that no further action by the Commission would be required.

1308 *See* Dreyfus Comment Letter. *See also, generally,* SIFMA Comment Letter (noting that the "fund's actions and the triggering event for the Form N-CR filing may require prospectus disclosure or notification to the Commission under other rule provisions, so that in many cases the Form N-CR filing will be duplicative of existing disclosure and notice requirements.").

disclosures of financial support in section III.F.3 above, while we are sensitive to commenters' concerns about duplication, we believe it appropriate given the different audiences and uses for such information.[1309]

b. Conforming and Related Changes

As discussed earlier, the final amendments lower the weekly liquid asset threshold for triggering the default liquidity fee from 15% to 10% of total assets, and accordingly, we are making corresponding changes that would require reporting under Form N-CR at the lower weekly liquid asset threshold.[1310] In addition, in a change from the proposal, the final amendments permit money market fund boards to institute a liquidity fee or impose a gate at any time once weekly liquid assets fall below 30% if they find that doing so is in the best interests of the fund.[1311] We are therefore amending Form N-CR to reflect these changes.[1312] We are making certain additional changes to Form N-CR for clarity and to be consistent with our final amendments to the liquidity fees and gates requirement.[1313] Accordingly, under the revised

[1309] *See* discussion following *supra* notes 1248 and 1249 and accompanying text.

[1310] *See supra* section III.A.2.a.ii; *see also*, Form N-CR Part E, (where applicable, now referencing 10% instead of 15% of weekly liquid assets).

[1311] *See supra* section III.A.2.

[1312] *See* Form N-CR Parts E and F.

[1313] In particular, for clarity, in the introduction to Part E we now define any affected fund as "a fund (except a government money market fund that is relying on the exemption in rule 2a-7(c)(2)(iii))" as opposed to "a Fund (except any Fund that is subject to the exemption provisions of rule 2a-7(c)(2)(iii) and that has chosen to rely on the rule 2a-7(c)(2)(iii) exemption provisions" as proposed. *See* proposed (Fees & Gates) Form N-CR Part E, Introduction. Similarly, for clarity and because of fund's additional flexibility under our final amendments to the liquidity fees and gates requirement, in the introduction to Part F we now simply refer to "fund" as opposed to "a Fund (except any Fund that is subject to the exemption provisions of rule 2a-7(c)(2)(iii) and that has chosen to rely on the rule 2a-7(c)(2)(iii) exemption provisions) that has invested less than fifteen percent of its Total Assets in weekly liquid assets (as provided in rule 2a-7(c)(2))." In addition, we received no comments on Part G of Form N-CR (requiring reporting when a liquidity fee or redemption gate is removed) and are adopting it unchanged from the proposal. *See* Form N-CR Part G. However, in the Proposing Release, the introduction to Part G contained a parenthesis specifying that certain exempt funds are not subject to Part G. *See* proposed (FNAV) Form N-CR Part G; proposed (Fees reporting standard, Parts E and/or F of Form N-CR must be filed: (i) when a fund, at the end of a business day, has invested less than 10% of its portfolio in weekly liquid assets and is required to impose a liquidity fee (unless the board determines otherwise), or (ii) when a fund voluntarily imposes a liquidity fee or redemption gate any time it has invested less than 30% of its portfolio in weekly liquid assets.[1314]

In addition, revised Form N-CR includes a new requirement that funds report their level of weekly liquid assets at the time of the imposition of fees or gates.[1315] We believe this new requirement will allow the Commission and investors to better track and understand funds' liquidity levels when boards impose a fee or gate using their discretion, which we expect will enhance the Commission's and investors' ability to evaluate the extent to which a fund is experiencing stress as well as the context in which the board made its decision. Similarly, because we are revising the default liquidity fee from the proposed 2% to 1%, and thus we expect that there may be instances where liquidity fees are above or below the default fee (rather

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& Gates) Form N-CR Part G. Because we no longer consider this parenthesis to be necessary, we have deleted it in the final amendments to enhance the clarity of the instructions of Part G.

1314 *See* Form N-CR Part E, clauses (i) and (ii) of the Introduction (generally triggering disclosure under Part E of Form N-CR if a non-exempt fund (i) at the end of a business day, has invested less than 10% of its total assets in weekly liquid assets, or (ii) has invested less than 30% of its total assets in weekly liquid assets and imposes a liquidity fee pursuant to rule 2a-7(c). Correspondingly, we are also adding "if applicable" to Item E.1 (requiring disclosure of the initial date on which the fund invested less than 10% of its total assets in weekly liquid assets, if applicable), and amending Item E.5 (requiring a brief description of the facts and circumstances leading to the fund's investing in the amount of weekly liquid assets reported in Item E.3). *See* Form N-CR Items E.1, E.3 and E.5.

1315 Form N-CR Items E.3 and F.1. In the Proposing Release we did not explicitly require funds to disclose their size of weekly liquid assets at the time of the imposition of fees or gates, given that as proposed funds could only impose a fee or gate once they crossed the 15% weekly liquid asset threshold. Proposed (Fees & Gates) Form N-CR Parts E and F. Item F.1 as originally proposed required disclosure of the initial date on which the fund invested less than 15% in weekly liquid assets. *See* proposed (Fees and Gates) Form N-CR Item F.1. Today we are not requiring an analogous disclosure of the initial date on which the fund invested less than 10% in weekly liquid assets, because this threshold does not have any impact on the imposition of a gate and, in any event, would be disclosed in Item E.1.

than just lower as permitted under the proposal), we are requiring that funds disclose the size of the liquidity fee, if one is imposed.[1316] In particular, we expect the particular size of the liquidity fee to be highly relevant to an investor determining whether to redeem fund shares, as it has a direct impact on the particular costs that such a shareholder would have to bear for redeeming fund shares. These changes are closely tailored to our final amendments to the liquidity fees and gate requirement, which we expect will enhance the quality and usefulness of Form N-CR to the Commission and investors.

6. *Part H: Optional Disclosure*

We are also adopting a new Part H in Form N-CR which allows money market funds the option to discuss any other events or information that they may wish to disclose. We intend new Part H to clarify and expand the scope and range of formats of any additional information that a fund may wish to provide. In particular, we are adopting Part H to address commenter concerns that the information provided in the other parts of Form N-CR may become outdated or lack context.[1317] We believe that this new optional disclosure could address some of these concerns.

This optional disclosure is intended to provide money market funds with additional flexibility to discuss any other information not required by Form N-CR, or to supplement and clarify other required disclosures.[1318] This optional disclosure does not impose on money market funds any affirmative obligation. Rather, this is solely intended as a discretionary forum where

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[1316] *See* Form N-CR Item E.4.

[1317] For example, one commenter cautioned "in a rapidly changing environment, the reasons for which the board acted may well change within a period of four days or significant amounts of additional information may be available to the fund and its board. In this context, a filing requirement focused on a prior decision risks inadvertently misleading fund investors and others about the state of the fund's operations." *See* MFDF Comment Letter.

[1318] *See* Form N-CR Item H.1, Instructions.

funds, if they so choose, can disclose any other information they deem helpful or relevant. In addition, although we expect that funds would typically file Part H along with a filing under another part of Form N-CR, we are not imposing any particular deadline for these filings, and thus a fund may file an optional disclosure on Part H of Form N-CR at any time.

7. *Timing of Form N-CR*

We are requiring initial filings of Form N-CR to be submitted within one business day of the triggering event, and in some cases, requiring a follow-up amendment with additional detail to be submitted four days after the event with some modifications from the proposal. A number of commenters requested additional time for Form N-CR filings, expressing concern over the timing requirements for specific items of Form N-CR,[1319] as well as objecting to the timing requirements more generally.[1320] For example, one commenter recommended that the filing deadline for the initial filing be extended from one to three business days and the follow-up filing from four to seven business days.[1321] Commenters argued that providing additional time would permit funds to ensure that filings are prepared accurately and thoughtfully[1322] while also better

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1319 *See, e.g.*, Fidelity Comment Letter, Schwab Comment Letter.

1320 Commenters proposed a range of alternative deadlines. *See, e.g.*, SSGA Comment Letter (generally extend time frame), Dechert Comment Letter (extend one-day filing deadline from 5:30pm to 10pm on the next business day), Schwab Comment Letter (four business days for filings related to a default or insolvency under Part B of Form N-CR), Dreyfus Comment Letter (2-3 day time frame), Stradley Ronon Comment Letter (seven business days for certain items), SIFMA Comment Letter (three and seven business days respectively for the initial and follow-up filings), IDC Comment Letter (two weeks for the second filing). Others proposed moving parts of Form N-CR to other annual or periodic reports altogether. *See, e.g.*, MFDF Comment Letter (move the discussion of the circumstances that led to a fee or gate to a new annual management discussion of fund performance.), NYC Bar Committee Comment Letter (proposing to revise and move the discussion of the board's analysis to the report to shareholders covering the relevant period).

1321 SIFMA Comment Letter.

1322 *See, e.g.*, SIFMA Comment Letter; IDC Comment Letter, SSGA Comment Letter, Stradley Ronon Comment Letter, MFDF Comment Letter.

enabling fund personnel to prioritize other exigent matters during times of crisis.[1323] They also argued that it may not be feasible or may be extremely costly for a fund in times of crisis to formulate within one business day the actions it may take in response to an event of default and prepare a corresponding description, as required under the proposal.[1324] We are not changing the filing deadlines of Form N-CR. The Commission and shareholders have a significant interest in knowing about the events reported on Form N-CR as soon as possible, to be able to effectively monitor events and to respond as necessary. We believe the longer reporting periods or entirely alternative reporting format (such as periodic reports, which might not be filed until significantly later) as proposed by commenters would frustrate the intent of Form N-CR in alerting the Commission, investors and other market observers about such important events in a timely and meaningful manner.

We appreciate commenters' concerns, however, and to help ease the filing burden we are revising Form N-CR to move certain disclosures in Items B, C and D that may take longer to prepare from the initial filing due within a single day to the follow-up filing due in four business days.[1325] In particular, the items moved to the follow-up filing are the description of actions the

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1323 *See* SIFMA Comment Letter. *See also, e.g.,* Dreyfus Comment Letter.

1324 *See, e.g.*, Schwab Comment Letter (noting that "[s]ome of the requested information can be provided in one business day, such as the securities affected, the date or dates on which the default or event of insolvency occurred, the value of the affected securities, and the percentage of the fund's total assets represented by the affected security. But we believe it is unreasonable to require a fund's board to determine in a single day what actions it should take in response to the event."). Commenters also noted that it may be extremely costly to provide some of the reported information in a single business day. *See, e.g.,* Fidelity Comment Letter (stating that "[i]t would be difficult for MMFs to produce validated data ready for public dissemination within one business day .... Further, providing data within a short timeframe would come at an estimated cost of $300,000-$500,000 [...].").

1325 In particular, filers are required to respond to Items B.5, C.8, C.9, C.10, and D.3 in an amendment to the initial report within four business days. All other Items in Parts B, C, and D must be disclosed in the initial report within one business day. We have made corresponding changes to the instructions to the form. *See* Form N-CR Part B, C, D, Instructions. In addition, we have rearranged what used to be proposed Item C.4

fund plans to take, or has taken, in response to a default (Item B.5), the explanation for the reasons and terms of any financial support provided (Item C.8), the term of any financial support provided (Item C.9), the brief description of any contractual restrictions relating to any financial support (Item C.10), and the principal reason or reasons for a decline in a fund's shadow price (Item D.3).[1326] We appreciate commenters' concerns that disclosures such as these may take additional time to prepare.[1327] We believe these specific disclosure items may be more labor intensive and take longer to prepare because they generally solicit qualitative and analytical information, whereas the other items in Parts B through D generally focus more on initially alerting the Commission and shareholders about a particular event and other key quantitative data.[1328]

Reducing the number of items included in the initial filing and moving the more time consuming and complicated disclosures to a second filing is designed to help address commenters' concerns about the one-day deadline of the initial filing,[1329] while still ensuring that the Commission, shareholders and other market observers are provided with these critical alerts as quickly as possible. We expect the information filed on the initial report will be sufficient to alert the Commission, investors and other interested parties about certain significant events.

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in the Proposing Release to be new Item C.8 in order to better streamline the disclosures required to be filed within one business day (Items C.1 through C.7) versus four business days (Items C.8 through C.10). *See* Proposing Release, proposed (Fees & Gates) Form N-CR Item C.4, Form N-CR Item C.8.

1326 *See* Fidelity Comment Letter (suggesting "that the SEC simplify the filing requirements for the first business day following the event to focus on shareholder notification of the event and key quantitative data," while "providing the remaining qualitative information (proposed Form N-CR Item B.5, C.4, C.9, C.10, D.3, E.3, E.4, F.3, F.4) on the second filing."

1327 *See supra* note 1324.

1328 *Cf.* Fidelity Comment Letter.

1329 *See, e.g.*, SIFMA Comment Letter, SSGA Comment Letter, Dreyfus Comment Letter.

While important, we also believe that the Items we are moving to the follow-up filing of Form N-CR may be of less immediate concern to the Commission and shareholders.

We are not, however, generally changing the one-day deadline of the initial filing,[1330] nor are we extending the four-day deadline for the follow-up filing of Form N-CR.[1331] We are concerned that extending the initial filing deadline beyond one business day could substantially diminish the informational utility of Form N-CR. The Commission and shareholders have a significant interest in knowing about the events reported on Form N-CR as soon as possible, to effectively monitor events and respond as necessary. We need this information to be reported promptly to effectively monitor money market funds that have come under stress and respond as necessary. A longer reporting period would frustrate the intent of Form N-CR in alerting the Commission, investors and other market observers about such important events in a timely and meaningful manner.[1332]

We also remain unpersuaded that the benefits of extending the follow-up filing beyond four business days is justified in light of the corresponding reduction in the utility of the

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1330 We have, however, revised the instructions on timing of the one-day deadline of the initial filing in each of Parts B through F to conform them to the wording used in the instruction on timing generally in General Instruction A. *See* Form N-CR Part B, C, D, E, F, Instructions.

1331 We proposed to allow the discussion of the boards' analysis related to imposing fees or gates be included in the follow-up filing, and we are adopting that requirement as proposed, as modified by the amendments to the board reporting discussed above. *See supra* section III.F.5 (Board Disclosures); Form N-CR Item E.5, E.6, F.3, F.4.

1332 For example, if funds were permitted three business days to prepare an initial filing, a fund that experienced a portfolio security default on a Friday would not be required to make an initial filing under Part B of Form N-CR until just before the close of business the following Wednesday. Depending on the circumstances, such a delay could prevent investors from taking into account this disclosure when making an investment decision until the next morning on Thursday (such as with respect to potential investors evaluating whether to purchase fund shares). Similarly, such a long delay would hinder our ability to effectively monitor money market funds that have come under stress and respond as necessary (in particular in light of our elimination of rule 2a-7(c)(7)(iii)(A), which currently requires money market funds to report defaults or events of insolvency to the Commission by email. *See supra* note 1211).

information reported on Form N-CR to the Commission, shareholders and other market observers. Extending the follow-up filing deadline could lead to a prolonged lack of material information about the triggering event. Such a delay could hinder investors' ability to evaluate their investments and undermine investor confidence.[1333] Furthermore, it could frustrate the Commission's ability to effectively monitor and take any appropriate response with respect to money market funds that have come under stress.[1334]

Because we expect that the information required to be provided in follow-up reports on Form N-CR should be readily accessible, we continue to believe four business days should be a sufficient amount of time for funds to prepare the report, even in light of the likely competing priorities on fund personnel during times of stress. We also recognize that some of the preparatory burdens faced by fund personnel could (and likely will)[1335] be shifted to legal counsel to the extent a fund chooses to engage legal counsel to assist in the drafting of a Form N-CR filing. Accordingly, we are adopting a deadline of one business day for an initial report and four business days for a follow-up report under Form N-CR.[1336]

1333 For example, a prolonged lack of material information may undermine investors' expectations that they are making investment decisions in a transparent market, which may lead to increased market volatility in affected money market funds as a result of the relative lack of accurate and timely information.

1334 For example, the Commission has a strong interest in knowing why a fund imposed a fee or gate. Depending on whether the reasons for such a gate were unique to the particular fund or related to broader market events, further action on the part of the Commission may be required to protect other investors and markets. Accordingly, given that the Commission generally needs this information as quickly as possible, we do not think the marginal benefits to funds of extending the deadline beyond what we believe to be reasonably required to prepare a follow-up filing is justified.

1335 *See infra* discussion containing note 1376.

1336 *See* Form N-CR General Instruction, A; Form N-CR Part B, C, D, E, F, Instructions which specify that responses to Items B.5, C.8, C.9, C.10, D.3, E.5, E.6, F.3 and F.4 may be filed within four business days.

8. Economic Analysis

As discussed above and in our proposal,[1337] we believe that the Form N-CR reporting requirements will provide important transparency to investors and the Commission, and also should help investors better understand the risks associated with a particular money market fund, or the money market fund industry generally. The Form N-CR reporting requirements will permit investors and the Commission to receive information about certain money market fund material events consistently and relatively quickly. As discussed above, we believe that investors and the Commission have a significant interest in receiving this information in this format and with this timing because it will permit investors and the Commission to monitor indicators of stress in specific funds or fund groups, as well as the money market fund industry, and also to analyze the economic effects of certain material events. The Form N-CR reporting requirements will give investors and the Commission a greater understanding of the circumstances leading to stress events, and how a fund manages them. We believe that investors may find this information to be meaningful in determining whether to purchase fund shares or remain invested in a fund.

However, we recognize that the Form N-CR reporting requirements have operational costs (discussed below), and also may result in opportunity costs, in that personnel of a fund that has experienced an event that requires Form N-CR reporting may lose a certain amount of time that could be used to respond to that event because of the need to comply with the reporting requirement.[1338] For example, as discussed with respect to timing in section III.F.7 above,

1337 *See* Proposing Release, *supra* note 25, at section III.G.3.

1338 Various commenters expressed concern that preparing Form N-CR would likely compete with other commenters argued that providing additional time would permit funds to ensure that filings are prepared accurately and thoughtfully[1339] while also better enabling fund personnel to prioritize other exigent matters during times of crisis.[1340] They also argued that it may not be feasible or may be extremely costly for a fund in times of crisis to formulate within one business day the actions it may take in response to an event of default and prepare a corresponding description, as required under the proposal.[1341] As discussed in section III.F.7 above, to help ease the filing burden we have revised Form N-CR to move certain disclosures that may take longer to prepare from the initial filing due within one day to the follow-up filing due in four business days. We therefore believe that the final deadlines adopted today for Form N-CR balance the exigency of the report with the time and cost it will reasonably take a fund to compile the required information.

We believe that the proposed Form N-CR reporting requirements may complement the benefits of increased transparency of publicly available money market fund information that have resulted from the requirement that money market funds report their portfolio holdings and other key information on Form N-MFP each month. The DERA Study noted that the additional

priorities that fund personnel would be handling during a crisis. *See, e.g.,* SIFMA Comment Letter, Dreyfus Comment Letter.

1339 *See, e.g.,* SIFMA Comment Letter; IDC Comment Letter, SSGA Comment Letter, Stradley Ronon Comment Letter, MFDF Comment Letter.

1340 *See* SIFMA Comment Letter. *See also, e.g.,* Dreyfus Comment Letter.

1341 *See, e.g.,* Schwab Comment Letter (noting that "[s]ome of the requested information can be provided in one business day, such as the securities affected, the date or dates on which the default or event of insolvency occurred, the value of the affected securities, and the percentage of the fund's total assets represented by the affected security. But we believe it is unreasonable to require a fund's board to determine in a single day what actions it should take in response to the event."). Commenters also noted that it may be extremely costly to provide some of the reported information in a single business day. *See, e.g.,* Fidelity Comment Letter (stating that "[i]t would be difficult for MMFs to produce validated data ready for public dissemination within one business day .... Further, providing data within a short timeframe would come at an estimated cost of $300,000-$500,000 [...].").

disclosures that money market funds are required to make on Form N-MFP improve fund transparency (although funds file the form on a monthly basis with no interim updates, and the Commission currently makes the information public with a 60-day lag).[1342] The DERA Study also noted that this "increased transparency, even if reported on a delayed basis, might affect a fund manager's willingness to hold securities whose ratings are at odds with the underlying risk, especially at times when credit conditions are deteriorating."[1343] Additionally, the availability of public, standardized, money market fund-related data that has resulted from the Form N-MFP filing requirement has assisted both the Commission and the money market fund industry in various studies and analyses of money market fund operations and risks.[1344]

The Form N-CR reporting requirement should enhance our understanding of the money market fund industry that the Commission has gained from analyzing Form N-MFP data by providing complementary data and additional transparency about money market funds' risks on a near real-time basis that is not currently available on Form N-MFP. This requirement may, like Form N-MFP disclosure, help impose market discipline on portfolio managers[1345] and provide additional data that would allow investors to make investment decisions, and allow the Commission and the money market fund industry to conduct risk- and operations-related analyses.

1342 *See* DERA Study, *supra* note 24, at 31; *see also, infra* note 1441 and accompanying text (discussing the elimination of the 60-day delay in making Form N-MFP information publicly available).

1343 *See* DERA Study, *supra* note 24, at 38.

1344 *See Money Market Mutual Funds, Risk, and Financial Stability in the Wake of the 2010 Reforms*, 19 ICI Research Perspective No. 1 (Jan. 2013), at note 29 (noting that certain portfolio-related data points are often only available from the SEC's Form N-MFP report).

1345 *See* American Bankers Ass'n Comment Letter (for example, stating that "[k]nowing that any form of sponsor support would be required to be disclosed within 24 hours, fund managers would likely do everything they could to avoid needing sponsor support.").

We believe that the reporting requirements we are adopting today may positively affect regulatory efficiency because all money market funds would be required to file information about certain material events on a standardized form. This will improve the consistency of information disclosure and reporting, and assist the Commission in overseeing individual funds, and the money market fund industry generally, more effectively. The requirements also could positively affect informational efficiency. This should assist investors in understanding various risks associated with certain funds, and risks associated with the money market fund industry generally, which in turn should assist investors in choosing whether to purchase or redeem shares of certain funds. Currently, funds compete on information provided on a fund's website and Form N-MFP, as well as on more traditional competitive factors such as price and yield. Implicitly, investors have also relied on sponsors to step in and support a fund when there is an adverse event. However, as we observed with the Reserve Primary Fund, this does not always happen. As such, the requirements should positively affect competition because funds may compete with each other based on information required to be disclosed on Form N-CR. For instance, investors might view a fund that invests in securities whose issuers have never experienced a default as a more attractive investment than another fund that frequently files reports in response to Form N-CR Part B ("Default or Event of Insolvency of portfolio security issuer"). However, it is also possible that investors may move their assets to larger fund complexes if, based on Form N-CR disclosures, they determine that such fund complexes are more likely than smaller entities to provide financial support to their funds. Also, if investors move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the Form N-CR reporting requirements, this could negatively affect the competitive stance of certain money market funds, or the money market fund industry generally.

The filing of Form N-CR could have additional effects on capital formation. The information filed on Form N-CR could improve capital formation if investors better understand that a fund is not sufficiently addressing the cause that led to the Form N-CR filing. One commenter[1346] suggested that certain Form N-CR disclosures would make money market funds more susceptible to heavy redemptions during times of stress. While we acknowledge the possibility of pre-emptive redemptions, as discussed in detail above, several aspects of today's amendments are designed to mitigate this risk. In addition, the other reforms we are adopting today (such as liquidity fees and redemption gates) will provide some fund managers additional tools for managing such redemptions, if they were to occur.[1347] Moreover, the additional information should assist investors in making a more informed investment decision, which leads to improved efficiency and capital formation. Furthermore, commenters have also argued that the proposed Form N-CR disclosures will actually decrease redemption risk by heightening self-discipline at funds, which would also increase capital formation.[1348] In addition, it is possible that investors will react positively to the information on Form N-CR if they feel the fund is sufficiently addressing the cause of the Form N-CR filing. For example, as noted in section III.F.5, we believe disclosure of a board's reasoning is particularly important in times of stress in order to mitigate against investor flight to transparency that might otherwise occur.

1346 *See, e.g.*, Federated V Comment Letter ("The goal of reform should be not to have the filing of a Form N-CR cause the widespread redemptions the Reform Proposal seeks to avoid."); Federated VIII Comment Letter.

1347 In addition, as discussed in more detail in sections III.F.4 and III.F.5 above, we note that some of our responses in section III.A.1.c.i to concerns over pre-emptive run risk related to the liquidity fees and gates requirement would similarly apply to run risk concerns with respect to certain specific disclosures in Form N-CR.

1348 *See, e.g.*, American Bankers Ass'n Comment Letter.

If money market fund investors decide to move all or a substantial portion of their money out of the market, this could negatively affect capital formation.[1349] On the other hand, capital formation could be positively affected if the Form N-CR reporting requirements were to assist the Commission in overseeing and regulating the money market fund industry, and the resulting regulatory framework would allow investors to more efficiently or more effectively invest in money market funds. Additional effects of these filing requirements on efficiency, competition, and capital formation would vary according to the event precipitating the Form N-CR filing, and they are substantially similar to the effects of other disclosure requirements, as discussed in more detail above.[1350]

The Commission is unable to measure the quantitative benefits of these requirements because of uncertainty about how increased transparency may affect different investors' behavior, their understanding of the risks associated with money market funds, and the potential effects of the disclosure on market discipline.

a. Alternatives Considered

As a possible alternative, we could have chosen to not adopt Form N-CR or any of its disclosures (as well as any of the corresponding SAI or website disclosures). A variation of this alternative would have been to eliminate Form N-CR but adopt the corresponding SAI and/or

1349 For an analysis of the potential macroeconomic effects of our main reforms, *see supra* section III.K.

1350 We believe that the effects on efficiency, competition, and capital formation of filing Form N-CR in response to Part B or C overlap significantly with the effects of the disclosure requirements regarding the financial support provided to money market funds. *See* discussion in *supra* section III.F. We believe that the effects of filing Form N-CR in response to Part D overlap significantly with the effects of the disclosure requirements regarding a money market fund's daily market-based NAV per share. *See* discussion in *supra* section III.F.4. We believe that the effects of filing Form N-CR in response to Parts E, F, and G overlap significantly with the effects of the disclosure requirements regarding current and historical instances of the imposition of liquidity fees and/or gates. *See supra* section III.F.5.

website disclosures. As discussed above, commenters expressed concern about the potential redundancy of Form N-CR or parts thereof in light of the corresponding website and SAI disclosures.[1351] If we did not adopt Form N-CR and/or any of the corresponding SAI and website disclosures, affected funds would not incur the additional costs related to Form N-CR that we discuss in more detail below.[1352] In addition, with respect to the board disclosure requirements in Parts E and F for Form N-CR, fund boards would not be concerned about the loss of board confidentiality or the possibility of opportunistic shareholder litigation.[1353] However, we rejected this set of alternatives for a number of reasons, including the following. First, each of the disclosures in Form N-CR serves to alert Commission staff, investors, and other market observers (such as news services, which in turn may alert investors) about important events in a timely manner.[1354] Second, as discussed in more detail in section III.F.3 (Concerns over Potential Redundancy), although we acknowledge there will be some textual overlap between these different forms, we believe each serves a distinct purpose.[1355] Moreover, as discussed in section III.F.5 (Board Disclosure) above, we have revised the board disclosure requirements in a number of ways in order to minimize any concerns over board confidentiality or opportunistic litigation.

Another alternative suggested by a number of commenters is to extend the deadline for filing Form N-CR by up to two weeks.[1356] A variation of this alternative would have been to

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1351 *See supra* note 1249 and accompanying discussion.

1352 Similarly, if we also had not adopted the corresponding SAI or website disclosures, funds would further not incur their related costs previously described. *See supra* sections III.E.8 and III.E.9.h.

1353 *See* our discussion about commenters' concerns in *supra* note 1290 and accompanying discussion.

1354 *See also supra* section III.F.8 for our discussion of the other economic benefits of Form N-CR.

1355 *See supra* section III.F.3. (Concerns over Potential Redundancy).

1356 *See supra* note 1320 and accompanying text for a discussion of commenters who proposed extending the filings deadlines.

move all or certain parts of Form N-CR to other (and typically later) periodic reports. For example, one commenter recommended that the board disclosure requirements under Parts E and F of Form N-CR "be provided in the report to shareholders covering the relevant period."[1357] Extending the deadline or moving these disclosures to a later periodic report or other filing could lower the cost for funds since funds may have additional cost due to the short time period to prepare the initial filings within one day and the follow-up within four days. Such additional preparation time may also lower opportunity costs for the fund, in that personnel of a fund can spend the initial time responding to the event that requires Form N-CR reporting rather than filing the Form N-CR. However, we rejected this set of alternatives because, as discussed above, in times of market stress the purpose of Form N-CR is to alert the Commission, shareholders and other market observers about significant events that affect the fund.[1358] If investors feel that they will have the necessary information to make an informed decision in times of stress, then this may lead to additional capital for funds. Likewise, we also believe that having the initial filing within one business day and the follow-up within four business days may lead to more market discipline among funds, resulting in increased investor willingness to participate in this market, which could also lead to additional capital for funds.

We also considered making the definition of financial support subject to a specific threshold or general materiality qualification, such as a specific drop in the NAV or liquidity.[1359] For example, such a threshold might apply if a fund's NAV drops by more than ¼ of 1 percent

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1357 NYC Bar Committee Comment Letter. *See, also, e.g.,* MFDF Comment Letter (move the discussion of the circumstances that led to a fee or gate to a new annual management discussion of fund performance.).

1358 For example, see also our related discussion in *supra* notes 1329-1333 and the accompanying text.

1359 *See, e.g.,* T. Rowe Price Comment Letter.

and the sponsor's investment in the fund causes the fund's NAV to recover. We rejected this alternative for several reasons. First, some types of sponsor support like a sponsor support agreement or a performance guarantee, which is included in the definition, does not necessarily or immediately result in a change in NAV or liquidity. Second, it is possible that sponsors would provide financial support to their funds before reaching the particular threshold, thereby avoiding the reporting requirement. As one commenter stated, "[k]nowing that any form of sponsor support would be required to be disclosed within 24 hours, fund managers would likely do everything they could to avoid the need for sponsor support."[1360]

We also considered various other refinements that specifically related to one of the particular disclosure items in Form N-CR, such as commenters' proposal to increase the deviation in the NAV triggering a report on Part D of Form N-CR from 0.25% to 0.5%.[1361] We generally consider and address these other suggestions in our discussion of the final amendments above.

b. Operational Costs: Overview

The operational costs of filing Form N-CR in response to the events specified in Parts B though H of Form N-CR are discussed below.[1362] Our estimates of operational costs below generally reflect the costs associated with an actual filing of Form N-CR. We continue to expect that the operational costs to money market funds to report the new information will generally be

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1360 *See* American Bankers Ass'n Comment Letter.

1361 *See supra* note 1276.

1362 These costs incorporate the costs of responding to Part A ("General information") of Form N-CR. We anticipate that the costs associated with responding to Part A will be minimal, because Part A requires a fund to submit only basic identifying information.

the same costs we discuss in the Paperwork Reduction Act analysis in section IV.D.2.a below.[1363]

We recognize that there could also be some advance discussions and preparation within the industry and at money market funds about having the necessary monitoring systems and controls in place to detect relevant issues immediately, escalate them quickly and get the form approved and filed. While we acknowledge these potential additional costs, we are unable to estimate them with any specificity,[1364] largely because we do not have the necessary information on how prepared funds may already be or how much advance preparation is needed in regards to filing a report in Form N-CR. For example, because certain disclosures such as Part B and C of Form N-CR will in part replace existing email notification requirements,[1365] we expect that many funds may already be prepared to detect and respond to these particular items. Moreover, in particular with respect to the disclosures about any liquidity fee or gate on Parts E through G of Form N-CR, we question the extent to which any advance preparation would be useful in light of the highly fact-specific nature of these disclosures.[1366] Accordingly, some funds may engage in very little or no advance preparation. In addition, we believe that most (if not all) preparational

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1363 As discussed in more detail in *infra* section IV.D.2.a, we have revised our cost estimates associated with filing a report with respect to each Part of Form N-CR. The Proposing Release originally estimated that a fund would spend on average approximately 5 burden hours and total time costs of $1,708 to prepare, review, and submit a report under any Part of Form N-CR. *See* Proposing Release, *supra* note 24, at nn.1203 and 1204 and accompanying text. This resulted in a total annual burden of approximately 301 burden hours and total annual time costs of approximately $102,765 under the floating NAV alternative and approximately 341 burden hours and total annual time costs of approximately $116,429 under the liquidity fees and gates alternative. *See* Proposing Release, *supra* note 25, at nn.1113 and 1205 and accompanying text.

1364 No commenters provided concrete cost estimates specifically in regards to these potential preparatory costs. For a more general discussion of commenters' comments on the burdens of Form N-CR, *see, e.g., supra* note 1363 and III.F.8.

1365 *See supra* notes 1211 and 1213.

1366 For similar reasons, our cost estimates in the PRA analysis in *infra* section IV.D.2 generally presume no particular advance preparation when preparing a filing on Form N-CR.

costs related to an event reportable on Parts E through G of Form N-CR, such as planning appropriate processes for the consideration of a liquidity fee or gate by the board, are more directly attributable to the liquidity fees and gates requirement itself,[1367] rather than the corresponding disclosure requirement on Form N-CR.[1368]

As discussed in sections III.F.2 – III.F.6 above, we are making a number of changes in our final amendments, a number of which we expect to impact the costs associated with filing a report on Form N-CR.[1369] For example, with respect to Parts B, C and D, we are now permitting filers to split their response into an initial and follow-up filing,[1370] similar to what we had already proposed for Parts E and F in the Proposing Release. Accordingly, in addition to our new estimate for Part H, we are updating and providing a more nuanced estimate of the costs associated with filing a report with respect to each of Parts B through G of Form N-CR.

In updating our estimates, we also considered comments about the operational costs related to Form N-CR. One commenter estimated that requiring disclosure of certain Items in Form N-CR within one business day could cost \$300,000 to \$500,000.[1371] However, our final amendments incorporate this commenter's proposed solution by shifting Items B.5, C.4, C.9,

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1367 *See, e.g.,* SIFMA Comment Letter (estimating costs of implementing the ability to impose liquidity fees and gates).

1368 *See supra* section III.A.1.

1369 *See supra* sections III.F.2 – III.F.6 for a more detailed discussion of each of our final amendments.

1370 *See supra* section III.F.7.

1371 *See* Fidelity Comment Letter (stating that "[i]t would be difficult for MMFs to produce validated data ready for public dissemination within one business day, particularly for items such as B.5, C.4, C.9, and C.10. Providing quantitative data within one business day would not only call for the coordination of information and its sources, but also its review and verification to ensure accuracy and completeness. Accordingly, we do not believe that this strict filing deadline is operationally feasible. Further, providing data within a short timeframe would come at an estimated cost of \$300,000-\$500,000, without factoring in the costs of ongoing compliance and filing, all of which greatly exceeds the SEC's estimated cost of \$1,700 and five hours to prepare and review information.").

C.10, and D.3 from the initial filing to the follow-up filing.[1372] Because today's amendments permit funds to file a response to these Items within four business days instead of just one business day, we expect the costs of filing Form N-CR to be notably less than what this commenter originally estimated.[1373] Although we received no other specific cost estimates from commenters with respect to Form N-CR, we also took into account commenters' general concerns and suggestions about the timing and various costs and burdens of Form N-CR.[1374] For example, we noted that commenters particularly cited the burdens and the role of the board in drafting and reviewing the board disclosures in Parts E and F.[1375]

We also updated our estimates to reflect the likelihood that some funds may engage legal counsel to assist with the drafting and review of Form N-CR, by which they would incur additional external costs. For example, as noted above, commenters cited the particular burdens and the role of various parties in drafting and reviewing the board disclosures in Parts E and F.[1376] In addition, given commenters' concern about timing as noted in section III.F.7, we take these various concerns to be an indicator that some funds may engage legal counsel. Accordingly, we estimate, in particular with respect to the follow-up reports under Parts B through F as well as any reports on Part H, that certain funds will engage legal counsel to assist with the drafting and

1372 *See supra* note 1326 and accompanying text.

1373 We are generally unable, however, to fully evaluate the basis or validity of this commenter's cost estimate, as we do not have all the data or assumptions on which this commenter's estimate is based. *See supra* note 1324 and accompanying text; Fidelity Comment Letter.

1374 *See, e.g.*, Dreyfus Comment Letter, Federated VIII Comment Letter, Legg Mason & Western Asset Comment Letter, MFDF Comment Letter.

1375 *See, e.g.*, IDC Comment Letter ("Any public disclosure about a board's decision-making process would require careful and thoughtful drafting and multiple layers of review (by board counsel, fund counsel, and the directors, among others)."); Stradley Ronon Comment Letter; SIFMA Comment Letter.

1376 *See id.*

review of Form N-CR, thereby incurring additional external costs.[1377]

c. Operational Costs of Part B: Default Events

As noted in the Proposing Release,[1378] we have estimated that the costs of filing a report in response to an event specified on Part B of Form N-CR will be higher than the costs that money market funds currently incur in complying with the rule 2a-7 provision which currently requires money market funds to report defaults or events of insolvency to the Director of Investment Management or the Director's designee by e-mail.[1379]

In updating our estimates for Part B of Form N-CR, we estimate the costs of filing and amending the report in response to an event specified on Part B of Form N-CR to include time costs of $4,830 and external costs of $1,000, for total costs of $5,830 for each set of initial and follow-up reports,[1380] and we expect, based on our estimate of the average number of notifications of events of default or insolvency that money market funds currently file each year, that the Commission would receive approximately 20 such filings per year.[1381] Therefore, we

1377 *See infra* note 2386 and accompanying discussion.

1378 *See* Proposing Release, *supra* note 25, at n.730 and accompanying text.

1379 The requirements of current rule 2a-7(c)(7)(iii)(A) and the requirement of Part B of Form N-CR are substantially similar, although Part B on its face specifies more information to be reported than current rule 2a-7(c)(7)(iii)(A). However, we understand that funds disclosing events of default or insolvency pursuant to current rule 2a-7(c)(7)(iii)(A) already have historically reported substantially the same information required by Part B. As noted, we are eliminating the existing email notification requirements in rule 2a-7 and are replacing it with the notification requirements of Form N-CR. *See supra* note 1211. We discuss the impact on costs of this elimination in sections III.F.8 and III.N.3.

1380 The costs associated with filing Form N-CR in response to an event specified on Part B of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.b.

1381 The Commission estimates this figure based in part by reference to our current estimate of an average of 20 notifications to the Commission of an event of default or insolvency that we previously estimated money market funds to file pursuant to current rule 2a-7(c)(7)(iii) each year. *See Submission for OMB Review, Comment Request, Extension: Rule 2a-7, OMB Control No. 3235-0268*, Securities and Exchange Commission 77 Fed. Reg. 236 (Dec. 7, 2012). We believe that this estimate is likely to be high, in particular when markets are not in crisis as they were during 2008 or 2011. However, we are continuing to use this higher estimate to be conservative in our analysis.

expect that the annual costs relating to filing a report on Form N-CR in response to an event specified on Part B would be $116,600.[1382]

d. Operational Costs of Part C: Financial Support

In addition to the general discussion above, in updating our estimate for Part C we also considered certain changes from the proposal specifically related to Part C of Form N-CR,[1383] most notably our changes to the definition of financial support,[1384] which we estimate will impact the frequency of filings on Part C of Form N-CR. As we noted in the Proposing Release,[1385] we have estimated the costs of filing a report in response to an event specified on Part C of Form N-CR in part by reference to the costs that money market funds currently incur in complying with the rule 2a-7 provision that requires disclosure to the Director of Investment Management or the Director's designee by e-mail when a sponsor supports a money market fund by purchasing a security in reliance on rule 17a-9.[1386] However, because Part C of Form N-CR is more extensive and defines "financial support" more broadly than the current requirements, we expect that the costs associated with filing a report in response to a Part C event would be higher than the current estimated costs of compliance with the current notification requirement.[1387]

In updating our proposed estimates for Part C of Form N-CR, we estimate the costs of

1382 These estimates are based on the following calculations: $5,830 (cost per complete filing) x 20 filings per year = $116,600 per year. *See supra* notes 1380 and 1381 and accompanying text.

1383 *See supra* section III.F.3. (Definition of Financial Support).

1384 *See supra* section III.F.3 and note 1242.

1385 *See* Proposing Release, *supra* note 25, at paragraph following n.733.

1386 Current rule 2a-7(c)(7)(iii)(B).

1387 As previously noted, we are eliminating the existing email notification requirements in rule 2a-7 and are replacing it with the notification requirements of Form N-CR. *See supra* note 1213. We discuss the impact on costs of this elimination in sections III.F.8 and III.N.3.

filing and amending the report in response to an event specified on Part C of Form N-CR to include time costs of $6,660 and external costs of $1,400, for total costs of $8,060 for each set of initial and follow-up reports,[1388] and we expect, based in part by reference to our estimate of the average number of notifications of security purchases in reliance on rule 17a-9 that money market funds currently file each year, that the Commission would receive approximately 30[1389] such filings per year.[1390] Therefore, we expect that the annual costs relating to filing a report on Form N-CR in response to an event specified on Part C would be $241,800.[1391]

e. Operational Costs of Part D: Shadow Price Declines

In an event of filing, we continue to believe a fund's particular circumstances that gave rise to a reportable event under Part D would be the predominant factor in determining the time and costs associated with filing a report on Form N-CR, in particular with respect to the follow-up filing amending the initial report.[1392]

In updating our proposed estimates for Part D of Form N-CR, we estimate the costs of filing and amending the report in response to an event specified on Part D of Form N-CR to include time costs of $4,830 and external costs of $1,000, for total costs of $5,830 for each set of

1388 The costs associated with filing Form N-CR in response to an event specified on Part C of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.c.

1389 In the Proposing Release, we originally estimated 40 filings per year under Part C of Form N-CR. *See* Proposing Release, *supra* note 25, at n.735 and accompanying text. As discussed in *supra* section III.F.3, today we are adopting certain exclusions from the definition of financial support that will narrow the definition to a certain degree. Correspondingly, in anticipation of a slight reduction in instances that meet the definition as amended today, we predict an estimated 30 filings per year under Part C of Form N-CR.

1390 See Submission for OMB Review, Comment Request, Extension: Rule 2a-7, OMB Control No. 3235-0268, Securities and Exchange Commission [77 FR 236 (Dec. 7, 2012)].

1391 These estimates are based on the following calculations: $8,060 (cost per complete filing) x 30 filings per year = $241,800 per year. *See supra* note 1388-1390 and accompanying text.

1392 *See* Proposing Release, *supra* note 25, at paragraph following n.736.

initial and follow-up reports,[1393] and we expect, based in part by reference to our estimate of the average number of instances in which the shadow price for a non-institutional money market fund has deviated downward by more than ¼ of 1 percent from its stable per share NAV price each year, that we will receive approximately 0.3 such filings per year.[1394] Therefore, we expect that the annual costs relating to filing a report on Form N-CR in response to an event specified on Part D would be $1,749.[1395]

f. Operational Costs of Part E and F: Imposition of Fees and Gates

In addition to the general discussion above, in updating our estimates we also considered certain changes from the proposal specifically related to Parts E and F of Form N-CR,[1396] most notably our changes to the board disclosure requirements[1397] and the weekly liquid asset thresholds permitting or triggering board consideration of a liquidity fee or gate.[1398] Moreover, in particular with respect to the board disclosures, we expect that most if not all funds may engage legal counsel to assist with the drafting and review of Form N-CR, thereby incurring additional external costs.[1399] We have also revised our estimates of the frequency of filings under Parts E

1393 The costs associated with filing Form N-CR in response to an event specified on Part D of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.d.

1394 Our staff has analyzed form N-MFP data from November 2010 to February 2014 and found that only one non-institutional fund had a ¼ of 1 percent deviation from the stable $1.00 per share NAV. 1 fund in over 39 months is equivalent to less than 1 (1 x 12 ÷ 39 = 0.31) funds per year. In the Proposing Release, we had estimated 0.167 reports filed per year in respect of Part D. *See* Proposing Release, *supra* note 25, at n.1205. We revised this estimate to reflect more accurate accounting and updated data.

1395 These estimates are based on the following calculations: $5,830 (cost per complete filing) x 0.3 filings per year = $1,749 per year. *See supra* note 1393 and 1394 and accompanying text.

1396 *See supra* section III.F.5.

1397 *See supra* section III.F.5. (Board Disclosures).

1398 *See supra* section III.F.5. (Conforming and Related Changes).

1399 For example, commenters cited the particular burdens and the role of the board in drafting and reviewing the board disclosures in Parts E and F. *See, e.g.*, IDC Comment Letter ("Any public disclosure about a and F.[1400] In an event of filing, we continue to believe a fund's particular circumstances that gave rise to a reportable event under Parts E or F would be the predominant factor in determining the time and costs associated with filing a report on Form N-CR, in particular with respect to the follow-up filing amending the initial report.[1401]

In revising our estimates for Part E of Form N-CR,[1402] we estimate the costs of filing and amending the report in response to an event specified on Part E of Form N-CR to include time costs of $10,910 and external costs of $3,600, for total costs of $14,510 for each set of initial and follow-up reports.[1403] The Proposing Release and the DERA Study analyzed the distribution of weekly liquid assets to determine how often a prime fund's weekly liquid asset percentage fell below the 30% and 10% thresholds. The analysis found that on average 6.9 out of 253 prime funds, or 2.7% of the funds, had their monthly weekly liquid assets percentages fall below 30%.[1404] This corresponds to 83 funds per year.[1405] The analysis also found that on average 0.05 out of 253 prime funds, or 0.02% of the funds, had their monthly weekly liquid assets percentages fall below 10%.[1406] This corresponds to 0.6 funds per year.[1407] As a result of the new

board's decision-making process would require careful and thoughtful drafting and multiple layers of review (by board counsel, fund counsel, and the directors, among others)."); Stradley Ronon Comment Letter; SIFMA Comment Letter.

1400 *See infra* notes 1410-1414 and accompanying text.

1401 *See* Proposing Release, *supra* note 25, at paragraph following n.736.

1402 The Proposing Release estimated that a fund would spend on average approximately 5 burden hours and total time costs of $1,708 to prepare, review, and submit a report under any Part of Form N-CR, including Part E. *See* Proposing Release, *supra* note 25, at nn.1203 and 1204 and accompanying text.

1403 The costs associated with filing Form N-CR in response to an event specified on Part E of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.e.

1404 *See* the table in the Proposing Release, *supra* note 25, referencing n.384; DERA Study, *supra* note 24, at 22.

1405 We estimate 83 funds per year as follows: 6.9 funds per month x 12 months = 83 funds per year.

1406 *See* the table in the Proposing Release, *supra* note 25, referencing n.384; DERA Study, *supra* note 24, at reporting requirements, we believe that funds will in general try to avoid having to file Form N-CR by keeping their weekly liquid asset percentages above 10%.[1408] In addition, of the 83 funds per year that reported a weekly liquid assets value below 30%, it is unclear how many would have decided to impose a fee, but we expect it to be lower than 83 funds given that not all boards would have likely imposed such a discretionary fee. As such, we expect, based on our calculation of the average number of instances in which a fund would breach the 10% and 30% weekly liquid asset threshold each year, that the Commission would receive between 0.6 and 83 such filings per year. For purposes of the Paperwork Reduction Act section below,[1409] we estimate that 0.6 funds per year would file a report triggered by the 10% weekly liquid asset threshold[1410] and an additional 0.6 funds per year would file a report because they crossed the 30% weekly liquid asset threshold and their board determined to impose a liquidity fee,[1411] for a total average of 1.2 instances per year. Therefore, we expect that the annual costs relating to

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1407 We estimate 0.6 funds per year as follows: 0.05 funds per month x 12 months = 0.6 funds per year.

1408 *See generally, e.g.,* SIFMA Comment Letter ("[Some members] believe the existence of the liquidity trigger for the fee and gate will motivate fund managers to maintain fund liquidity well in excess of the trigger level, to avoid triggering the fee or gate.");

1409 *See infra* section IV.D.2.e. In the Proposing Release, we had previously estimated a total of 4 reports in response to Parts E and F based on the previously proposed 15% weekly liquid asset trigger. *See* Proposing Release, *supra* note 25, at n.1202. For a more detailed discussion of the reasons for our changed estimates, *see also infra* note 2408.

1410 As noted above, as a result of the new reporting requirements, we believe that funds will in general try to avoid having to file Form N-CR by keeping their weekly liquid asset percentages above 10%. Accordingly, we believe our estimates of the frequency of filings in response to Part E of Form N-CR are likely to be high. However, we are using these higher estimates to be conservative in our analysis.

1411 As discussed in section IV.D.2.e, we estimate that funds will voluntarily impose a liquidity fee at most as often as they will be required to consider a liquidity fee based on the 10% weekly liquid asset trigger. Accordingly, the Commission conservatively estimates that 0.6 additional funds per year would file a report in response to Part E because it breached the 30% weekly liquid asset threshold and their board determined to impose such a discretionary liquidity fee.

filing a report on Form N-CR in response to an event specified on Part E will be \$17,412.[1412]

In revising our estimates for Part F of Form N-CR,[1413] we estimate the costs of filing and amending the report in response to an event specified on Part F of Form N-CR of Form N-CR to include time costs of \$10,910 and external costs of \$3,600, for total costs of \$14,510 for each set of initial and follow-up reports.[1414] As stated above, the DERA study found that 83 prime funds per year had their weekly liquid asset percentages fall below 30%.[1415] Of these 83 funds, it is unclear how many would have decided to impose a gate, but we expect it to be lower than 83 funds given that not all boards would have likely imposed such a discretionary gate. Thus, we expect, based on our calculation of the average number of instances in which a fund would breach the 30% weekly liquid asset threshold each year, that the Commission would receive between zero and 83 such sets of initial and follow-up reports per year. For purposes of the Paperwork Reduction Act section below,[1416] we conservatively estimate that 0.6 funds per year would file a report because they breached the 30% weekly liquid asset threshold and their board determined to impose a gate.[1417] Therefore, we expect that the annual costs relating to filing a

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1412 These estimates are based on the following calculations: \$14,510 (cost per complete filing) x [0.6+0.6] filings per year = \$17,412 per year. *See supra* notes 1403-1410 and accompanying text.

1413 The Proposing Release estimated that a fund would spend on average approximately 5 burden hours and total time costs of \$1,708 to prepare, review, and submit a report under any Part of Form N-CR, including Part F. *See* Proposing Release, *supra* note 25, at nn.1203 and 1204 and accompanying text.

1414 The costs associated with filing Form N-CR in response to an event specified on Part F of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.f.

1415 *See* DERA Study, *supra* note 24, at 22.

1416 *See infra* section IV.D.2.f. In the Proposing Release, we had previously estimated a total of 4 reports in response to Parts E and F based on the previously proposed 15% weekly liquid asset trigger. *See* Proposing Release, *supra* note 25, at n.1202. For a more detailed discussion of the reasons for our changed estimates, *see also infra* note 2421.

1417 As discussed and estimated in more detail in *infra* section IV.D.2.f, we conservatively estimate the number of instances in which a fund breached the 30% weekly liquid asset threshold and its board determined to impose a voluntary gate to be equal to the number of instances in which a fund breached the 30% weekly report on Form N-CR in response to an event specified on Part F would be $8,706.[1418]

g. Operational Costs of Part G: Lifting of Fees and Gates

As discussed in the Proposing Release, we continue to believe the frequency of filings under Part G on Form N-CR to be closely correlated to the frequency of filings under Parts E and F.[1419] Given our revised estimates of the number of filings under Parts E and F,[1420] we are correspondingly revising our estimate of the number of filings under Part G.[1421] We are further revising our estimates for Part G, because we expect the cost per filing associated with responding to Part G to be lower than for Parts E or F.[1422] Unlike Parts B through F and H, for which we have included estimated external costs to account for the possibility that funds may engage legal counsel to assist in the preparation and review of Form N-CR,[1423] we have not done so here because of the relative simplicity of Part G.

In revising our estimates for Part G of Form N-CR,[1424] we estimate the costs of filing a

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liquid asset threshold and its board determined to impose a voluntary fee, or 0.6 instances per year.

1418 These estimates are based on the following calculations: $14,510 (cost per complete filing) x 0.6 filings per year = $8,706 per year. *See supra* notes 1414-1417.

1419 *See, e.g.,* Proposing Release, *supra* note 25, at n.1202 and accompanying discussion. We expect there to be a close correlation because Part G requires disclosure of the lifting of any liquidity fee or gate imposed in connection with Part E or F.

1420 *See supra* notes 1410 and 1417 and accompanying discussions.

1421 *See infra* section IV.D.2.g. The Proposing Release estimated a total of 4 reports in response to Part G. *See* Proposing Release, *supra* note 25, at n.1202. For a more detailed discussion of the reasons for our revised estimates, *see also infra* notes 2433-2437 and accompanying text.

1422 In the Proposing Release, our staff originally estimated that a fund would spend on average approximately 5 burden hours and total time costs of $1,708 to prepare, review, and submit a report under any Part of Form N-CR. *See* Proposing Release, *supra* note 25, at nn.1203 and 1204 and accompanying text. However, we expect a response to Part G to be shorter than under Parts E or G, given that Part G only requires disclosure of the date on which a fund removed a liquidity fee and/or resumed Fund redemptions. *See* Form N-CR Item G.1. In addition, unlike Part E or F, Part G would not require any follow-up report.

1423 *See supra* sections IV.D.2.b – IV.d.2.f; *see also infra* section IV.D.2.h.

1424 The Proposing Release estimated that a fund would spend on average approximately 5 burden hours and report in response to an event specified on Part G of Form N-CR to include time costs of $695 per filing,[1425] and we expect, based in part by reference to our estimate of how often funds would file Form N-CR under Part E or F each year, that the Commission would receive between zero and 83 such filings per year.[1426] For purposes of the Paperwork Reduction Act section below, we estimate that 1.8 funds per year would file a report because they lifted a liquidity fee or gate.[1427] Therefore, we expect that the annual costs relating to filing a report on Form N-CR in response to an event specified on Part G would be $1,251.[1428]

h. Operational Costs of Part H: Optional Disclosure

Given the broad scope and voluntary nature of the optional disclosure under Part H of Form N-CR, we believe that, in an event of filing, a fund's particular circumstances that led it to decide to make such a voluntary disclosure would be the predominant factor in determining the time and costs associated with filing a report on Form N-CR. In estimating costs, we expect that some funds may engage legal counsel to assist with the drafting and review of Form N-CR, thereby incurring additional external costs.[1429]

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total time costs of $1,708 to prepare, review, and submit a report under any Part of Form N-CR, including Part F. *See* Proposing Release, *supra* note 25, at nn.1203 and 1204 and accompanying text.

1425 The costs associated with filing Form N-CR in response to an event specified on Part G of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.g.

1426 For purposes of this estimate of filings under Part G, we conservatively assume that there would be a filing under Part G for every filing under either Parts E or F. Given that some affected funds may liquidate instead of ever lifting the respective liquidity fee or gate, we therefore expect this estimate of the frequency of Part G filings may be high.

1427 *See infra* section IV.D.2.g.

1428 These estimates are based on the following calculations: $695 (cost per complete filing) x 1.8 filings per year = $1,251 per year. *See supra* notes 1425-1427 and accompanying text.

1429 In particular, we expect that funds are more likely to file a report on Part H when there are more complex events that need to be addressed, which we believe will make it correspondingly more likely that funds will engage legal counsel.

Accordingly, we estimate the costs of a filing in response to an event specified on Part H of Form N-CR to include time costs of $1,390 and external costs of $800, for a total cost of $2,190 per filing,[1430] and we expect that the Commission will receive approximately 18 such filings per year.[1431] Therefore, we expect that the annual costs relating to filing a report on Form N-CR in response to an event specified on Part H will be $32,850.[1432]

i. Aggregate Operational Costs

In the aggregate, we estimate that compliance with new rule 30b1-8 and Form N-CR would result in total annual time costs of approximately $339,588[1433] and total external costs of $80,780.[1434] Given an estimated 559 money market funds that would be required to comply with new rule 30b1-8 and Form N-CR,[1435] this would result in average annual time costs of approximately $607 and average annual external costs of $145 on a per-fund basis.[1436]

G. Amendments to Form N-MFP Reporting Requirements

The Commission is today adopting amendments to Form N-MFP, the form that money

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1430 The costs associated with filing Form N-CR in response to an event specified on Part H of Form N-CR are paperwork-related costs and are discussed in more detail in *infra* section IV.D.2.h.

1431 For purposes of our estimate in section IV.D.2.h below, we conservatively estimate that funds would include a disclosure under Part H in about a quarter of the instances they submit a follow-up filing under Parts B through F, as well as with respect to a quarter of all filings under Part G. Because of the timing constraints, we generally would not expect funds would to make a Part H disclosure in an initial filing. We also would not generally expect funds to make a Form N-CR filing under Part H alone. However, given the possibility that funds might make a Part H disclosure in the initial filing or on a stand-alone basis, we conservatively estimate one additional Part H filing per year under each scenario. As calculated in in section IV.D.2.h below, we therefore estimate an annual total of 15 filings in response to Part H.

1432 These estimates are based on the following calculations: $2,190 (cost per complete filing) x 15 filings per year = $32,850 per year. *See supra* notes 1430 and 1431 and accompanying text.

1433 *See infra* note 2446.

1434 *See infra* note 2447.

1435 *See supra* note 2448.

1436 *See infra* note 2449.

market funds use to report their portfolio holdings and other key information to us each month. We use the information to monitor money market funds and support our examination and regulatory programs. Each fund must file the required information on Form N-MFP electronically within five business days after the end of each month. Currently, we make the information public 60 days after the end of the month.[1437] Money market funds began reporting this information to us in November 2010.[1438]

Today we are amending Form N-MFP to reflect the amendments to rule 2a-7 discussed above. In addition, we are requiring the reporting of certain new information that will be useful for our oversight of money market funds, and making other improvements to the form based on our previous experience with filings submitted to us. Most commenters generally supported the proposed amendments to Form N-MFP, agreeing that the improved reporting would be useful to the Commission and investors.[1439] Although these commenters generally supported the proposed amendments, many of them raised concerns with certain specific changes and additional reporting items.[1440] We did not receive any comment on a number of the proposed amendments, and are generally adopting those amendments as proposed.

1437 *See* current rule 30b1-7(b).

1438 On average, 575 money market funds (excluding feeder funds) filed Form N-MFP with us each month throughout 2013. Funds reported information on approximately 67,000 securities on average each month.

1439 *See, e.g.*, Wells Fargo Comment Letter; ICI Comment Letter ("We generally support the proposed amendments…"); Boston Federal Reserve Comment Letter. One commenter opposed the amendments generally, suggesting that Form N-MFP is a tool for the Commission, not investors, and argued that the cost of the greater reporting requirements is not justified by the usefulness of the information to the Commission. *See* Dreyfus Comment Letter. We discuss the usefulness of the information reported on Form N-MFP to investors throughout this section, and similarly discuss the costs of compliance in section III.G.5. below.

1440 *See, e.g.*, Wells Fargo Comment Letter (objecting to shareholder flow reporting); Fidelity Comment Letter (objecting to lot level purchase and sale data); SIFMA Comment Letter (objecting to shareholder concentration reporting).

To respond to comments we received, the final form amendments differ in some respects from what we proposed, such as not adopting the lot level security and shareholder concentration reporting requirements, as well as certain other refinements which are discussed below. We are adopting many of the other proposed amendments unchanged, including eliminating the 60-day delay on public availability of the data. As proposed, we are not changing the requirement that funds continue to file reports on Form N-MFP once each month (as they do today), but are adopting a requirement that certain limited information (such as the NAV per share, liquidity levels, and shareholder flow) be reported on a weekly basis within the monthly filing.[1441]

We are adopting these changes to Form N-MFP because they further support the Commission's efforts to oversee the stability of money market funds and compliance with rule 2a-7,[1442] and should assist money market fund shareholders in better understanding the risks of their investments. As proposed, in connection with these amendments, we are renumbering the items of Form N-MFP to separate the items into four separate sections and are making other minor reformatting changes.[1443] These amendments will apply to all money market funds, with both stable value and floating NAV money market funds reporting on Form N-MFP as amended.

1441 We requested comment on potentially requiring filing of Form N-MFP on a weekly, rather than a monthly basis. Commenters generally opposed such an increase in frequency of filing of the form, and we are retaining the requirement to file the form on a monthly basis at this time. *See, e.g.*, Dreyfus Comment Letter; SIFMA Comment Letter.

1442 References to amended Form N-MFP will be to "Form N-MFP Item" or to "Item" and references to Form N-MFP as it was proposed to be amended in 2013 will be to "Proposed Form N-MFP Item." We are not amending items in Form N-MFP that reference credit ratings at this time.

1443 *See* Form N-MFP: (i) general information (Items 1 – 8); (ii) information about each *series* of the fund (Items A.1 – A.21; (iii) information about each *class* of the fund (Items B.1 – B.8); and (iv) information about portfolio securities (Items C.1 – C.25). Our renumbering of the items will enable us to add or delete items in the future without having to re-number all subsequent items in the form.

1. Amendments Related to Rule 2a-7 Reforms

We proposed a number of changes to Form N-MFP designed to conform it with the general reforms of rule 2a-7.[1444] Commenters generally did not object to these proposed amendments, and we are adopting them largely as proposed, with some revisions to reflect the revised approach we are taking to the primary reforms.

a. Amortized Cost

As part of the primary reforms to rule 2a-7, we proposed to eliminate the use of the amortized cost valuation method for stable value money market funds, and to correspond with that elimination, we also proposed to remove references to amortized cost and shadow prices from Form-N-MFP. However, as discussed previously in section II.B.5, the final amendments will permit the continued use of the amortized cost valuation method for stable value money market funds.[1445] Accordingly, to conform the changes to Form N-MFP to the final amendments to rule 2a-7, we are not adopting the Form N-MFP amendments that would have removed references to the amortized cost of securities in certain existing items, although we are moving and rephrasing the references where appropriate to be consistent with the final amendments to rule 2a-7.[1446]

1444 *See* Proposing Release *supra* note 25, at section III.H.1.

1445 *See supra* section II.B.5.

1446 Form N-MFP currently requires that each series of a fund disclose the total amortized cost of its portfolio securities (Item 13) and the amortized cost for each portfolio security (Item 41). As we proposed, we are amending Items 13 and 41 by replacing amortized cost with "value" as defined in section 2(a)(41) of the Act (generally the market-based value). *See* Form N-MFP Items A.14.b and C.18, and Form N-MFP General Instructions, E. Definitions. As a result, we are removing current Form N-MFP Items 45 and 46, which require that a fund disclose the value of each security using available market quotations, both with and without the value of any capital support agreement. Form N-MFP Item C.18 would require that money market funds report portfolio security market values both including and excluding the value of any sponsor support. As we proposed, to improve transparency of MMF's risks, we are also clarifying that money market funds must disclose the value of "any sponsor support" applicable to a particular portfolio security, Because we proposed to eliminate amortized cost valuation (which would have required all money market funds to value their shares at market-based values even if they transacted at a dollar through penny rounding), we had correspondingly proposed to eliminate the reporting requirements related to money market fund "shadow prices" from Form N-MFP and instead require funds to report their market-based NAV. As a result of the final amendments to rule 2a-7 permitting the continued use of amortized cost for certain money market funds, the final amendments to Form N-MFP also continue to require reporting of fund shadow prices (on a series and class level) for funds that use the amortized cost method of valuation.[1447] This requirement would be part of the requirement to report the fund's NAV on a class and series level.

b. Weekly Reporting Within Monthly Filing

The final rules also require reporting of a money market fund's NAV per share (and shadow price), daily and weekly liquid assets, and shareholder flows on a weekly basis within the monthly filing of the form, as we proposed.[1448] Two commenters generally objected to the proposed requirements for weekly reporting within a monthly form.[1449] These commenters argued that weekly information gathering will increase fund costs and suggested that the benefits are speculative. They also noted that this weekly reported information would be available on the

rather than "capital support agreements" as stated in current Form N-MFP Items 45 and 46. We are also continuing to require, as proposed, reporting of the amortized cost value of money market funds that use that method to value securities for all or any portion of their portfolio. *See* Form N-MFP Item A.14.b.i .

1447 *See* Form N-MFP Items A.20 and B.5. These requirements are moved and reformatted from the existing form as part of the overall renumbering and re-organizing of the form.

1448 Form N-MFP Items A.13, A.20, B.5 and B.6. As discussed in section IV.A.6.c funds would also be required to report their NAV per share and shadow price on a daily basis on their website.

1449 Dreyfus Comment Letter; SIFMA Comment Letter. These commenters objected to all of the proposed weekly items, including reporting on the funds' NAV per share, levels of daily and weekly liquid assets, and shareholder flows.

fund's website, resulting in redundant disclosure.[1450] We appreciate these concerns, but disagree. Form N-MFP and website disclosure have different purposes. Under our final disclosure amendments, as discussed above funds will be required to report market-based NAV per share information daily on their websites (as well as the liquidity and shareholder flow information), so the weekly information should be readily available at little additional cost. Including this weekly information on the fund's filing will allow Commission staff to better monitor risks and trends in fund valuation (as well as liquidity and shareholder flow) in an efficient and more precise manner without requiring frequent visits to the websites of many different funds, and will be a useful resource for investors and others as well. Because it will be housed in a central repository of data, this information can be aggregated and analyzed across the fund industry and can be used in a standardized manner to enhance comparability.[1451] The additional data points we collect will enable us to better monitor trends and risks on a more granular time level for individual funds and money market funds as a whole. In contrast, the website disclosures are intended to be more accessible and "user-friendly" than Form N-MFP for individual investors trying to research particular funds. We have required other such parallel reporting for similar reasons.[1452]

c. NAV per share (and shadow price) reporting to Fourth Decimal Place

Today on Form N-MFP, funds report, both for each series and each class, shadow price

1450 *Id.*

1451 *See also supra* section III.F.

1452 For example, money market funds are currently required to disclose much of the portfolio holdings information they disclose on Form N-MFP on the fund's website as well. *See* current rule 2a-7(c)(12)(ii); Form N-MFP General Instruction A.

of their NAV, rounded to the fourth decimal place for a fund with a $1.00 share price (or an equivalent level of accuracy for funds with a different share price).[1453] Under the proposed amendments to the Form, we proposed to keep this reporting requirement (although in a different place within the Form consistent with the general reformatting). This reporting is consistent with the rounding convention that was proposed for floating NAV money market funds to price and transact in our rule proposal. No commenters specifically addressed this current Form N-MFP requirement, or its reformatting. As discussed in section III.B.3.c above we are adopting a requirement for floating NAV funds to transact at this "basis point rounding" level of accuracy. As when we originally adopted this requirement in 2010, we continue to believe that information about a fund's NAV priced to a basis point rounding level of accuracy will be relevant and useful for the Commission and investors when monitoring money market fund risks and trends.[1454] This information will be used by the Commission and others to identify money market funds that continue to seek to maintain a stable price per share[1455] and help us better evaluate any potential deviations in their unrounded share price. Reporting the NAV per share to the fourth decimal place on Form N-MFP is also consistent with the precision of NAV reporting that funds would be required to provide on their websites under our final amendments. Accordingly, the Form continues to require reporting of a money market fund's NAV to the fourth decimal place, as is

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1453 Form N-MFP Items 18 and 25. *See also* Proposing Release *supra* note 25, at section III.H.1.

1454 *See* 2010 Adopting Release, *supra* note 81, at section II.E.2. We note that many large fund complexes already disclose on their websites the daily money market fund market valuations (*i.e.*, shadow prices) of at least some of their money market funds, rounded to four decimal places ("basis point" rounding), for example, BlackRock, Fidelity Investments, and J.P. Morgan. *See, e.g., Money Funds' New Openness Unlikely to Stop Regulation,* WALL ST. J. (Jan. 30, 2013). *See also* sections III.B and IV.A.6.

1455 We are also adopting, as proposed, a new item requiring reporting for funds that seek to maintain a stable price per share to state the price that the fund seeks to maintain. *See* Form N-MFP Item A.18.

required today and under the proposal.[1456]

d. Category Reporting

As we proposed, we are also amending the category options at the series level that money market funds use to identify themselves to include exempt government fund as an option.[1457] We are also adding a sub question, new from the proposal, asking if the fund is an exempt retail fund under rule 2a-7.[1458] This new subsection is necessary to help identify whether a fund is exempt because it is a government fund or if it is exempt because it is a retail fund which will be important in our ongoing monitoring efforts. These new categories will allow us to better identify the types of funds operating.

e. Economic Analysis

Consistent with the proposal, any effect resulting from these amendments (except as noted below), including the requirement that each monthly report include information on a weekly basis, is included in our economic analysis of our amendments that require money market funds to disclose NAV, liquidity and shareholder flow daily on fund websites.[1459] Accordingly, we do not believe that the proposed amendments would impose other costs not discussed in that section on money market funds other than those required to modify systems used to aggregate data and file reports on Form N-MFP, as discussed below. We expect, as discussed previously in this section, that the revised forms will benefit investors by enhancing their understanding of money market funds, and will enhance our monitoring and regulatory

[1456] Form N-MFP Items A.20 and B.5.

[1457] *See* Form N-MFP, Item A.10.

[1458] *See* Form N-MFP, Item A.10.a.

[1459] *See supra* section III.E.9.h.

programs.

We believe that the revised form will be easier for investors to understand because the amendments will allow investors to better focus on a single market-based valuation for individual portfolio securities and the fund's overall NAV per share. Accordingly, we expect that the overall effects will be to increase efficiency for investors. Because we believe that investors are likely to make at least incremental changes to their trading patterns in money market funds due to the changes to Form N-MFP, it is likely that the changes will affect competition and capital formation. Although it is difficult to quantify the size of these effects without better knowledge about how investors will respond, we believe that the effects from the changes to Form N-MFP will be small relative to the effects of the underlying reforms.

2. *New Reporting Requirements*

We are also adopting several new items to Form N-MFP that we believe will improve our (and investors') ability to monitor money market funds. As discussed further below, these final amendments include some, but not all of the new reporting requirements that we had proposed. For example, as proposed, the final amendments include additional information about fair value categorization and LEIs (if available). We are also adopting, with some changes from the proposal, revisions to several other items, including revised investment categories for portfolio securities and repurchase agreement collateral. However, we are not adopting the lot level portfolio security disclosure, top 20 shareholder information, and security identifier level reporting on repo collateral that we had proposed. These amendments we are adopting should help address gaps in data that have become apparent from analysis of Form N-MFP filings that we have received to date. As discussed further below, each amendment requires reporting of additional information that should be readily available to the fund and, in many cases, should infrequently change from report to report.

a. Security Identifiers

Certain of the final amendments we are adopting today are designed to help us and investors better identify fund portfolio securities.[1460] To facilitate monitoring and analysis of the risks posed by funds, it is important for Commission staff to be able to identify individual portfolio securities. Fund shareholders and potential investors that are evaluating the risks of a fund's portfolio will similarly benefit from the clear identification of a fund's portfolio securities. Currently, the form requests information about the CUSIP number of a security, which the staff uses as a search reference. The staff has found that some securities reported by money market funds lack a CUSIP number, and this absence has reduced the usefulness of other information reported.[1461] To address this issue, we are adopting as proposed the requirement that funds also report the LEI that corresponds to the security, if available.[1462] We are also adopting as proposed

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[1460] We also are also adopting, as proposed, a requirement that a fund provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about Form N-MFP from Commission staff. We will exclude this information from Form N-MFP information that is made publicly available through EDGAR. *See* Form N-MFP Item 8.

[1461] Our inability to identify specific securities, for example, limits our ability to compare ownership of the security across multiple funds and monitor issuer exposure. As discussed in the proposal, during the month of February 2013, funds reported 6,821 securities without CUSIPs (approximately 10% of all securities reported on the form).

[1462] *See* Form N-MFP Item C.4; Form N-MFP General Instructions, E. Definitions (defining "LEI"). To ensure accurate identification of Form N-MFP filers and update the Form for pending industry-wide changes, we are also requiring, as proposed, that each registrant provide its LEI, if available. *See* Form N-MFP Item 3. The Legal Entity Identifier is a unique identifier associated with a single corporate entity and is intended to provide a uniform international standard for identifying counterparties to a transaction. The Commission has begun to require disclosure of the LEI, once available. *See, e.g.*, Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors, *available at* http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf. A global LEI standard is currently in the implementation stage. *See Frequently Asked Questions: Global Legal Entity Identifier (LEI)* (Feb. 2013), U.S. Treasury Dept., *available at* http://www.treasury.gov/initiatives/ofr/data/Documents/LEI_FAQs_February2013_FINAL.pdf. Consistent with staff guidance provided in a Form PF Frequently Asked Questions, *available at* http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml, funds that have been issued a CFTC Interim final amendments that require that funds report at least one other security identifier, if available.[1463] One commenter suggested that the proposed requirement to include multiple securities identifiers might not be possible for certain securities, such as municipal securities, which may only have a single identifier available.[1464] We note that the requirement to include multiple identifiers is only required if such identifiers are actually available.[1465]

b. Fair Value Categorization

We are also adopting, with certain modifications from the proposal described below, amendments that are designed to help the staff and investors better identify certain risk characteristics that the form currently does not capture. Responses to these new items, together with other information reported, would improve the staff and investors' understanding of a fund and its potential risks by providing information about how the fund is valuing its investments.

We proposed to require funds to report whether a security is categorized as a level 1, level 2, or level 3 measurement in the fair value hierarchy under U.S. GAAP.[1466] We noted in the

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Compliant Identifier ("CICI") by the Commodity Futures Trading Commission may provide this identifier in lieu of the LEI until a global LEI standard is established.

1463 *See* Form N-MFP Item C.5 (requiring that, in addition to the CUSIP and LEI, a fund provide at least one additional security identifier, if available). Security identifiers should be readily available to funds. *See, e.g.*, http://www.sec.gov/edgar/searchedgar/cik.htm (providing a CIK lookup that is searchable by company name). We are also requiring that a fund provide the LEI (if available) for a security subject to a repurchase agreement (but unlike under the proposal, not the CUSIP). *See* Form N-MFP Items C.8.

1464 *See* Vanguard Comment Letter.

1465 Form N-MFP Items C.4 and C.5.

1466 *See* Accounting Standards Codification 820, "Fair Value Measurement"; Proposed Form N-MFP Item C.20. Level 1 categorized measurements include quoted prices for identical securities in an active market. Level 2 categorized measurements include: (i) quoted prices for similar securities in active markets; (ii) quoted prices for identical or similar securities in non-active markets; and (iii) pricing models whose inputs are observable or derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the security. Security measurements categorized as level 3 are those whose value cannot be determined by using observable measures (such as market quotes and prices of comparable instruments) and often involve estimates based on certain assumptions.

Proposing Release that we understood that most money market fund portfolio securities are categorized as level 2, and that although we understood that very few of a money market fund's portfolio securities are currently valued using significant unobservable inputs, and thus categorized as level 3, information about any such securities would enable our staff to identify individual securities that may be more susceptible to wide variations in pricing.[1467] We also discussed how Commission staff could use this information to monitor for increased valuation risk in these securities, and to the extent there is a concentration in the security across the industry, identify potential outliers that warrant additional monitoring or investigation. One commenter objected to the requirement to report the fair value level of portfolio securities, arguing that because most money market fund securities are categorized as level 2, a more efficient approach would be to only require disclosure if a security is categorized as level 3.[1468] We agree that because most money market fund securities are categorized as level 2, the relevant information for us and investors is whether the security is categorized as level 3, and that it would be simpler and less costly for funds to report whether a security is categorized as level 3, rather than the level used for each security in the fund's portfolio. Accordingly, the final amendments require funds to disclose whether a security is categorized at level 3, not the fair value level of each security.[1469] We believe that most funds directly evaluate the fair value level measurement categorization when they acquire the security and reassess the categorization when

[1467] For a discussion of some of the challenges regulators may face with respect to Level 3 accounting, *see, e.g.*, Konstantin Milbradt, *Level 3 Assets: Booking Profits and Concealing Losses*, 25 Rev. Fin. Stud. 55,95 (2011).

[1468] *See* Federated VIII Comment Letter.

[1469] Form N-MFP Item C.20.

they perform portfolio valuations.[1470] Accordingly, we continue to believe that funds should have ready access to the nature of the portfolio security valuation inputs used.

c. Lot Level Reporting

We proposed to require funds to report additional information about each portfolio security, including, in addition to the total principal amount, the purchase date, the yield at purchase, the yield as of the Form N-MFP reporting date (for floating and variable rate securities, if applicable),[1471] and the purchase price.[1472] This information would have been required to be reported separately for each lot purchased.[1473] In addition, we proposed to require that money market funds disclose the same information for any security sold during the reporting period.[1474] In the Proposing Release, we suggested that because money market funds often hold multiple maturities of a single issuer, each time a security is purchased or sold, price discovery occurs and an issuer yield curve could be updated and used for revaluing all holdings of that

1470 Funds should regularly evaluate the pricing methodologies used and test the accuracy of fair value prices (if used). *See* Accounting Series Release No. 118, Financial Reporting Codification (CCH) section 404.03 (Dec. 23, 1970).

1471 We understand that the yields on variable rate demand notes, for example, may vary daily, weekly, or monthly. Our amendments would have provided Commission staff and others with a way to monitor the market's response to changes in credit quality, as well as identify potential outliers.

1472 *See* proposed N-MFP Item C.17. Because yield at purchase would be disclosed in a separate item, we proposed to delete the reference to "(including coupon or yield)" from current Form N-MFP Item 27 (Form N-MFP Item C.2). Because as discussed below, we are not adopting the lot level reporting requirements we proposed, we are retaining the reference to coupon in the title of the issue. However, to facilitate use of the data collected and to clarify the time that the yield of the security must be calculated (as of the Form N-MFP reporting date), we are moving the question about yield out of the title question and adopting it as a standalone response. *See* proposed N-MFP Item C.17. When disclosing a security's coupon or yield (as required in proposed Form N-MFP Items C.2 or C.8.e), funds generally should report (i) the stated coupon rate, where the security is issued with a stated coupon, and (ii) the coupon rate as of the Form N-MFP reporting date, if the security is floating or variable rate. Because we not adopting the lot level reporting requirement, funds would not need to report, as discussed in the proposal, the interest rate at purchase. Finally, funds generally should disclose the name of the *collateral* issuer (and not the name of the issuer of the repurchase agreement).

1473 *See* proposed Form N-MFP Item C.17.

1474 *See* proposed Form N-MFP Item C.25.

particular security. Therefore, our proposed amendments, if adopted, could have had the incidental benefit of facilitating price discovery and would have enabled the Commission, investors, and others to evaluate pricing consistency across funds (and identify potential outliers).[1475]

A number of commenters strongly opposed this proposed new lot level reporting requirement.[1476] They noted that the number of reporting line items could go up tenfold under this requirement, and that costly new systems would need to be built to effectively report this information on an ongoing basis.[1477] Commenters also noted that the lot level security information is proprietary, and could be used to the disadvantage of funds and shareholders.[1478] They also questioned the value of this information to the Commission, noting the high costs of providing it.[1479] We appreciate the concerns of commenters, and are modifying the final amendments to eliminate the proposed lot level security reporting requirement. Although collecting data on the purchase and sale of money market fund securities could improve pricing transparency, and allow us to better monitor risks and valuation issues, we are persuaded by commenters that reporting this information at the lot level may be costly and could disclose

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1475 *See* Comment Letter of the Presidents of the 12 Federal Reserve Banks (Feb. 12, 2013) (available in File No. FSOC–2012–0003) (''Federal Reserve Bank Presidents FSOC Comment Letter''), *supra* note 48 (suggesting that more frequent reporting on Form N-MFP might increase price discovery for market-based NAV calculations).

1476 *See, e.g.,* ICI Comment Letter; Federated II Comment Letter; Wells Fargo Comment Letter.

1477 *See, e.g.,* Dreyfus Comment Letter; Fidelity Comment Letter (noting that for one fund, one month's reporting included 336 lines at the CUSIP level, and under the proposed lot level requirement, that fund would have contained over 2100 reporting lines, and that of those lots, only 15 were purchased at different yields, and 11 of those were Treasury securities).

1478 *See, e.g.,* Vanguard Comment Letter; BlackRock II Comment Letter.

1479 *See, e.g.,* ICI Comment Letter ("Indeed, our members have expressed concern that the reporting of this type of confidential trading information could compromise management of their portfolios."); Fidelity Comment Letter.

proprietary information about security purchase prices that could harm funds, and therefore their shareholders. We also believe that this data might be more useful if collected on a systematic, market-wide basis which may both provide more comprehensive and consistent coverage and mitigate the concerns about proprietary data disclosure.[1480] Accordingly, we are not adopting the lot level purchase and sale data reporting requirements that we proposed.

d. Liquidity and Shareholder Flow Data

We are also adopting amendments, with certain modifications from the proposal as described below, that require funds to report the amount of cash they hold,[1481] the fund's daily liquid assets and weekly liquid assets,[1482] and whether each security is considered a daily liquid asset or weekly liquid asset.[1483] Unlike the other items of disclosure on Form N-MFP that must be disclosed on a monthly basis, as discussed previously, we are requiring that funds report their Daily Liquid Assets and Weekly Liquid Assets on a weekly basis.[1484] One commenter suggested that we align reporting of fund liquid assets on Form N-MFP (which is dollar based) with the reporting of liquid assets on fund websites (which is percentage based).[1485] We agree that such

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1480 One commenter discussed a similar approach, suggesting that "price discovery might be enhanced through other methods, such as increasing the categories of securities reported through the Financial Industry Regulatory Authority's Trade Reporting and Compliance Engine (TRACE) system." Wells Fargo Comment Letter.

1481 *See* Form N-MFP Item A.14.a and Form N-MFP General Instructions, E. Definitions (requiring, as proposed, disclosure of the amount of cash held and defining "cash" to mean demand deposits in insured depository institutions and cash holdings in custodial accounts, respectively). We are also amending, as proposed, Item 14 of Form N-MFP (total value of other assets) to clarify that "other assets" excludes the value of assets disclosed separately (*e.g.*, cash and the value of portfolio securities). *See* Form N-MFP Item A.14.c. This amendment would ensure that reported amounts are not double counted.

1482 *See* Form N-MFP Item A.13.

1483 Form N-MFP Items C.21 – C.22.

1484 *See supra* note 1448.

1485 Fidelity Comment Letter. Requiring both the total value and percentage of total assets of these data points parallels the information that is collected for each security in Items C.18 and C.19 (dollar value and alignment would provide better consistency and comparability of information between information on fund's website and the information reported on Form N-MFP. Accordingly, the final amendments to Form N-MFP require reporting of fund daily and weekly liquid assets on both a dollar and percentage basis.[1486] Because the percentages are already reported on fund websites, this information should be readily available. The information should help us and others to better understand the relative liquidity of fund portfolios.

Similarly, we are adopting the proposed amendments to require that money market funds disclose the weekly gross subscriptions (including dividend reinvestments) and weekly gross redemptions for each share class, once each week during the month reported.[1487] As discussed earlier, money market funds would continue to file reports on Form N-MFP once each month, but certain information (including disclosure of daily and weekly liquid assets) would be reported weekly within the form. Several commenters objected to the requirement to disclose shareholder flow data, arguing that such disclosure could be confusing to shareholders, and is not necessarily indicative of stress.[1488] One commenter also suggested that if shareholder flow data was reported, it should be on a net rather than gross basis.[1489]

We agree that shareholder flows do not necessarily indicate stress in a fund, but they can

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percentage basis).

1486 Form N-MFP Items A.13.a – A.13.d. As discussed in section III.G.2.i, we are not requiring disclosure of liquid assets on fund websites on a dollar basis because we believe that the most relevant information to investors is the percentage of fund assets that are liquid.

1487 *See* Form N-MFP Item B.6. We also are continuing to require that money market funds disclose the monthly gross subscriptions and monthly gross redemptions for the month reported. *See* current Form N-MFP Item 23.

1488 *See, e.g.*, Legg Mason & Western Asset Comment Letter; Dreyfus Comment Letter; Wells Fargo Comment Letter.

1489 SIFMA Comment Letter.

be informative in monitoring fund activity and evaluating the potential risks. We believe gross rather than net flow data is more useful for us and investors because it allows more transparency into the particular redemption and purchase patterns at a fund. We do not believe this additional information would confuse investors, because they can compare the gross inflows to the gross outflows if they believe that the net data is the relevant information in their decision making process. We continue to believe that these amendments would provide Commission staff and others with additional relevant data to efficiently monitor fund risk (such as monitoring the risk that a fund might cross the 10% liquidity-based fee threshold under the liquidity fee amendments we are adopting today), and correlated risk shifts in liquidity across the industry.[1490] Increased periodic disclosure of the daily and weekly liquid assets on Form N-MFP would provide increased transparency into how funds manage their liquidity, and it may also impose market discipline on portfolio managers. In addition, increased disclosure of weekly gross subscriptions and gross redemptions (reported weekly, in addition to monthly) would improve the ability of the Commission, investors, and others to better understand the significance of other liquidity disclosures required by our proposals (*e.g.*, daily and weekly liquid assets). It will also allow the Commission to better understand patterns of shareholder flows over time and how funds respond to those shareholder flows, and compare those flows to funds' liquid assets, and we may use them in connection with our examination and regulatory efforts. Accordingly, we are adopting the amendments to disclose weekly gross subscriptions and weekly gross redemptions as proposed.

[1490] As discussed in section III.E.9.a, money market funds would also be required to disclose each day on its website the fund's Daily Liquid Assets and Weekly Liquid Assets and shareholder flows.

e. Fee Waivers

We are today also adopting the proposed requirement that each fund must disclose whether its adviser or a third party paid for or waived all or part of its operating expenses or management fees during a given reporting period.[1491] One commenter objected to this proposed requirement, arguing that fee waivers are not necessarily indicative of an adviser's financial position, and that such information may confuse investors and leave an incorrect impression of the health of the adviser because waivers are just one aspect of the financial ability of an adviser to support a fund.[1492]

We agree that fee waivers are not necessarily dispositive information about an adviser's financial position or its willingness to potentially support a fund. We do not agree that this information would confuse investors, in part because fee waivers are already disclosed in the fund's prospectus (as discussed below), and interested investors may wish to use this information in their investment decision making process, even if it is not the sole or even most dispositive piece of information used in evaluating the financial health of the adviser or the ability of the adviser to support the fund in times of stress. We continue to believe, as stated in the proposal, that information about expense waivers is relevant and will help both investors and the Commission better evaluate money market fund performance and risk and respond accordingly. To the extent that money market funds waive fees to boost performance and attract assets, the new disclosure requirement should help investors better understand the basis of fund

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1491 Form N-MFP Item B.8 (requiring that funds provide the name of the person and describe the nature and amount the expense payment or fee waiver, or both (reported in dollars)).

1492 Schwab Comment Letter.

performance so they can make more informed investment choices.[1493] In addition, the Commission will be better able to evaluate and respond to financial strains on fund advisers. In low interest rate environments, money market fund yields can become sufficiently small that advisers must waive fees to offer investors positive returns.[1494] It may also help us better monitor the overall financial impact of fee waivers on money market fund advisers and the effect of such waivers on the industry as a whole. Accordingly, we are adopting the fee waiver reporting requirement as proposed.

f. Percentage of Shares Held by Top 20 Shareholders

We proposed to amend Form N-MFP to require funds to disclose the total percentage of shares outstanding held by the twenty largest shareholders of record. At the time, we noted that this information could help us (and investors) identify funds with significant potential redemption risk stemming from shareholder concentration, and evaluate the likelihood that a significant market or credit event might result in a run on the fund or the imposition of a liquidity fee or gate.[1495]

1493 We recognize fee waivers are also required to be disclosed in a fund's fee table, but believe it is useful to have them reported on Form N-MFP as well, for the same reasons discussed in the section on weekly reporting within a monthly filing above, as each set of disclosures may reach different audiences who may be seeking out the information for different purposes (*i.e.* an investor looking at fee waivers in the fee table may be looking at them for purposes of whether fees on their investments may go up later, while investors looking in Form N-MFP may be looking to help determine the potential impact on the adviser).

1494 In some cases, fee waivers can have similar effects as capital support. Since 2009, MMFs have dramatically increased fee waivers to keep yields positive in a low interest rate environment. In 2011, MMFs waived more fees ($5.2 billion) than they collected ($4.7 billion). *See* Investment Company Institute, "*Submission by the Investment Company Institute Working Group On Money Market Fund Reform Standing Committee on Investment Management International Organization of Securities Commissions,*" Feb 7, 2012. Moreover, more money was forfeited in fee waivers from 2009-2011 ($13.3 billion) than was spent during the financial crises from 2007-2009 by fund advisers on capital support events ($12.0 billion) to stabilize the NAVs of the largest 100 (US and European) prime funds. *See* Moody's Sponsor Support Report, *supra* note 54.

1495 Form N-MFP Item A.19.

A number of commenters objected to this proposed reporting requirement, arguing that such data could be confusing to shareholders because investments through omnibus accounts would be counted as single shareholders of record, potentially portraying a misleading portrait of the concentration level of the fund.[1496] A commenter also suggested that the appearance of higher shareholder concentration levels as a result of omnibus accounts does not necessarily correlate with higher run risk and may mislead the public.[1497] We recognize this, and agree that because of the prevalence of omnibus accounts, the proposed shareholder concentration disclosure may not succeed in achieving its purpose as the information provided may portray an incorrect and misleading picture of the level of shareholder concentration in a fund. This disclosure may create confusion if certain funds appear more concentrated than they actually are, as a result of those omnibus accounts appearing to be a single shareholder. For the same reasons, we expect that the information would similarly not be particularly useful for us in our monitoring efforts. Accordingly, upon further consideration of these concerns, we are not adopting the requirement to report the percentage of fund shares held by the top 20 shareholders.

g. Investment Categories

We are also adopting, with some changes in response to comments, certain amendments to Form N-MFP's investment categories for portfolio securities. The new investment categories should help Commission staff identify particular exposures that otherwise are often reported in other less descriptive categories (*e.g.*, reporting sovereign debt as "treasury debt" or reporting

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1496 *See, e.g.,* Schwab Comment Letter; Federated VIII Comment Letter.

1497 Dreyfus Comment Letter.

asset-backed securities (that are not commercial paper) as "other note" or "other instrument").[1498] Several commenters suggested revisions to the investment categories we proposed, noting that these changes would better match investment categories that are used more broadly and consistently in the industry.[1499] After reviewing these comments, we have revised the final investment categories to better align the categories with typical industry categorizations and provide a more precise description of fund investments.[1500] We expect that the revised categories should not pose an additional burden compared to the categories we proposed, as they are very similar, with minor changes to better reflect our understanding of common industry practice.

h. Other Amendments

In addition, we are adopting, as we proposed, the amendments that would require funds to report the maturity date for each portfolio security using the maturity date used to calculate the dollar-weighted average life maturity ("WAL") (*i.e.*, without reference to the exceptions in rule

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1498 Currently N-MFP requires funds to categorize their investments from among the following categories: "Treasury Debt; Government Agency Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset Backed Commercial Paper; Other Commercial Paper; Certificate of Deposit; Structured Investment Vehicle Note; Other Note; Treasury Repurchase Agreement; Government Agency Repurchase Agreement; Other Repurchase Agreement; Insurance Company Funding Agreement; Investment Company; Other Instrument. If Other Instrument, include a brief description." Current Form N-MFP Item 31. We proposed to amend the investment categories in proposed Form N-MFP Item C.6 to include new categories: "Non U.S. Sovereign Debt," "Non-U.S. Sub-Sovereign Debt," "Other Asset-Backed Security," "Non-Financial Company Commercial Paper" (instead of "Other Commercial Paper"), and "Collateralized Commercial Paper," and amend "U.S. Government Agency Debt" and "Certificate of Deposit (including Time Deposits and Euro Time Deposits)."

1499 *See* Wells Fargo Comment Letter; Fidelity Comment Letter.

1500 The final rules would amend the amend the investment categories in Form N-MFP Item C.6 to include the following selections: "U.S. Treasury Debt; U.S. Government Agency Debt; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; or Tender Option Bond. If Other Instrument, include a brief description."

2a-7(i) regarding interest rate readjustments).[1501] As we discussed in our proposal, this information will assist the Commission in monitoring and evaluating this risk, at the security level, as well as help evaluate compliance with rule 2a-7's maturity provisions.[1502] In addition, our amendments would make clear that funds must disclose for each security all three maturity calculations as required under rule 2a-7: WAM, WAL, and the legal maturity date.[1503]

We are also adopting, as proposed, a requirement that a fund disclose the number of shares outstanding, to the nearest hundredth, at both the series level and class level.[1504] This information would permit us to verify or detect errors in information provided on Form N-MFP, such as NAV. We are also adopting, as proposed, a requirement that a fund disclose, where applicable, the period remaining until the principal amount of a security may be recovered through a demand feature and whether a security demand feature is conditional.[1505] As we discussed in the proposal, these amendments will improve the Commission's and (investors') ability to evaluate and monitor a security's credit and default risk. We did not receive comment on these other amendments and are adopting them as proposed.

i. Economic Analysis

1501 Form N-MFP Item C.12.

1502 We are also newly clarifying that the maturity date required to be reported in current Form N-MFP Item 35 is the maturity date used to calculate WAM under rule 2a-7(d)(1)(ii) (*see* Form N-MFP Item C.11) and the maturity date required to be reported in current Form N-MFP Item 36 is the ultimate legal maturity date, *i.e.*, the date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid (*see* Form N-MFP Item C.13). The ultimate legal maturity date, as clarified, will help us distinguish between debt securities that are issued by the same issuer.

1503 Form N-MFP Items C.11, C.12 and C.13. In a modification from the proposal, we have changed the term "final legal maturity date" in Item C.13of Form N-MFP to "ultimate legal maturity date" to clarify the reporting date for securities that may have varying maturity dates.

1504 Form N-MFP Items A.17 and B.4.

1505 Form N-MFP Items C.14.e and C.14.f.

As detailed above and discussed in the proposal, these new reporting requirements are intended to address gaps in the reporting regime that Commission staff has identified through our experience with Form N-MFP and to enhance the ability of the Commission and investors to monitor funds. Although the benefits are difficult to quantify, they will improve the ability of the Commission and investors to identify and analyze a fund's portfolio securities (*e.g.*, by requiring disclosure of LEIs and an additional security identifier, if available, already required). In addition, many of our new reporting requirements will enhance the ability of the Commission and investors to evaluate a fund's risk characteristics (by requiring that funds disclose, for example, the following data: security categorizations, whether a security is valued using level 3 measurements; more detailed information about securities at the time of purchase; and liquidity metrics). We believe that the additional information required is readily available to funds as a matter of general business practice and therefore will not impose costs on money market funds other than those required to modify systems used to aggregate data and file reports on Form N-MFP. These costs are discussed in section IV.C.2 below.

These new reporting requirements will improve informational efficiency by improving the transparency of potential risks in money market funds and promoting better-informed investment decisions, which, in turn, will lead to a better allocation of capital. Similarly, the increased transparency may promote competition among funds as fund managers are exposed to external market discipline and better-informed investors who may be more likely to select an alternative investment if they are not comfortable with the risk-return profile of their fund. As we discussed in the Proposing Release, the newly disclosed information may cause some money market fund investors to move their assets among different money market funds, but we do not have the information necessary to provide a reasonable estimate of this possibility. In addition, some investors may move assets among money market funds and alternative investments (*e.g.*, private liquidity funds, separately managed accounts, or certificates of deposit) or other segments of the short-term financing markets, but we are unable to estimate how frequently this will happen with specificity and we do not know how the other underlying assets compare with those of money market funds. In addition, it is difficult to establish the extent to which any such exchanges would be a result of the broader amendments we are making or a marginal effect of the amendments we are making to Form N-MFP. In addition, no commenters suggested ways for us to quantify these exchanges with specificity. Thus, we continue to remain unable to estimate the amount of such asset movements with specificity. Therefore, we are unable to estimate the overall net effect on capital formation or competition. Nevertheless, we believe that the net effect will be small, especially during normal market conditions, in part because such asset movements would generally be among investment alternatives, rather than avoiding investment entirely.

3. *Clarifying Amendments*

We are adopting, as proposed, several amendments to clarify current instructions and items of Form N-MFP. Revising the form to include these clarifications should improve the ability of fund managers to complete the form and improve the quality of the data they submit to us.[1506] We believe that many of our clarifying amendments are consistent with current filing practices.[1507]

1506 We are also adopting, as proposed, technical changes to the "General Information" section of the form that will clarify the circumstances under which a money market fund must complete certain question sub-parts. *See* Form N-MFP Items 6 and 7.

1507 As discussed below, the final amendments are consistent with written guidance our staff has provided to money market fund managers and service providers completing Form N-MFP.

We understand that some fund managers compile their funds' portfolio holdings information as of the last calendar day of the month, even if that day falls on a weekend or holiday. To provide flexibility, we are amending, as proposed, the instructions to Form N-MFP to clarify that, unless otherwise specified, a fund may report information on Form N-MFP as of the last business day *or* any later calendar day of the month.[1508] We are also revising, as proposed, the definition of "Master-Feeder Fund" to clarify that the definition of "Feeder Fund" includes unregistered funds (such as offshore funds).[1509] Our final amendments also would clarify, as proposed, that funds should calculate the WAM and WAL reported on Form N-MFP using the same methods they use for purposes of compliance with rule 2a-7.[1510] We also are requiring, as proposed, that funds disclose in Part B (Class-Level Information about the Fund) the required information for each class of the series, regardless of the number of shares outstanding in the class.[1511]

1508 *See* Form N-MFP General Instruction A (Rule as to Use of Form N-MFP); rule 30b1-7. Our approach is also consistent with a previous interpretation provided by our staff. *See* Staff Responses to Questions about Rule 30b1-7 and Form N-MFP, Question I.B.1 (revised July 29, 2011), *available at* http://www.sec.gov/divisions/investment/guidance/formn-mfpqa.htm.

1509 *See* Form N-MFP General Instruction E (defining "Master-Feeder Fund," and defining "Feeder Fund" to include a registered or unregistered pooled investment vehicle). Form N-MFP requires that a master fund report the identity of any feeder fund. Our amendment is designed to address inconsistencies in reporting of master-feeder fund data that we have observed in filings, and will help us determine the extent to which feeder funds, wherever located, hold a master fund's shares. The change will also reflect how we understand data from master-feeder funds is collected by the ICI for its statistical reports. We are also making grammatical and conforming amendments to Form N-MFP Items A.7 and A.8, as proposed.

1510 *See* Form N-MFP Items A.11 and A.12 (defining "WAM" and "WAL" and cross-referencing the maturity terms to rule 2a-7). We are also amending the 7-day gross yield to require that the resulting yield figure be carried to (removing the words "at least") the nearest hundredth of one per cent and clarify that master and feeder funds should report the 7-day gross yield (current Form N-MFP Item 17) at the master fund level. Form N-MFP Item A.19. These amendments are intended to achieve consistency in reporting and remove potential ambiguity for feeder funds when reporting the 7-day gross yield.

1511 *See* text before Form N-MFP Item B.1. Our staff has found that funds inconsistently report fund class information, for example, when a fund does not report a fund class registered on Form N-1A because the fund class has no shares outstanding. Our amendment is intended to clarify a fund's reporting obligations and provide Commission staff (and investors) with more complete information about each fund's capital

We also are amending, with certain modifications from the proposal discussed below, the reporting requirements for repurchase agreements by restating the item's requirements as two distinct questions.[1512] The amendment would make clear that information about the securities subject to a repurchase agreement must be disclosed regardless of how the fund treats the acquisition of the repurchase agreement for purposes of rule 2a-7's diversification requirements.[1513] As part of these amendments, we proposed to amend form N-MFP to require reporting of a security identifier of collateral securities underlying repurchase agreements.[1514] One commenter objected to this revision, arguing that this level of detail would publicly disclose proprietary information about broker-dealer inventories, which may negatively affect allocations of repurchase agreements to money market funds.[1515] We appreciate this concern and are not adopting the requirement to report a security identifier of the collateral securities underlying repurchase agreements for that reason.[1516] In addition, the same commenter objected to the revised investment categories we proposed regarding this collateral, arguing that we should instead use the categories used to report tri-party repurchase agreement information to the

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structure.

1512 *See* Form N-MFP Item C.7 (requiring that a fund disclose if it is treating the acquisition of a repurchase agreement as the acquisition of the underlying securities (*i.e.*, collateral) for purposes of portfolio diversification under rule 2a-7). *See* Form N-MFP Item C.8. (requiring that a fund describe the securities subject to the repurchase agreement). This information should be readily available to funds and would enhance the ability of Commission staff and others to evaluate the risks (*e.g.*, rollover risk or the duration of the lending) presented by investments in repurchase agreements. *See* Form N-MFP Item C.8.a.

1513 We are also making several other non-substantive clarifications to other items. *See* Form N-MFP Item 1 (amending the format of reporting date provided by funds); and Form N-MFP Item A.10 (modifying, for consistency, the names of money market fund categories).

1514 Proposed Form N-MFP Item C.8.c.

1515 Wells Fargo Comment Letter.

1516 *See* Form N-MFP Item C.8.

Federal Reserve Bank of New York ("NY Fed").[1517] We agree that conforming these categories to those used in other reporting contexts will ease reporting burdens and enhance comparability, and accordingly have modified the proposed investment categories to conform them to the categories used by the NY Fed.[1518]

Finally, we are amending, as proposed, the items in Form N-MFP that require information about demand features, guarantors, or enhancement providers to make clear that funds should disclose the identity of *each* demand feature issuer, guarantor, or enhancement provider and the amount (*i.e.*, percentage) of fractional support provided, which should help us monitor funds diversification.[1519] Our amendments also clarify, as proposed, that a fund is not required to provide additional information about a security's demand feature(s) or guarantee(s) unless the fund is relying on the demand feature or guarantee to determine the quality, maturity, or liquidity of the security.[1520]

As discussed above, and in the proposal, these clarifying amendments are intended to improve the quality of the data we receive on Form N-MFP by clarifying a number of reporting obligations so that all funds report information on Form N-MFP in a consistent manner. Accordingly, we do not believe that these clarifying amendments would impose any new costs on funds other than those required to modify systems used to aggregate data and file reports on

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1517 Wells Fargo Comment Letter.

1518 *See* Form N-MFP Item C.8.h.

1519 *See* Form N-MFP Items C.14 – C.16.

1520 Form N-MFP already requires that a fund disclose only security enhancements on which the fund is relying to determine the quality, maturity, or liquidity of the security. *See* current Form N-MFP Item 39. Similarly, we are amending, as proposed, current Form N-MFP Items 37 (demand features) and 38 (guarantees) to make clear that funds are required to disclose information relating to demand features and guarantees only when the fund is relying on these features to determine the quality, maturity, or liquidity of the security. *See* Form N-MFP Items C.14 and C.15.

Form N-MFP, to the extent that funds in the past may have reported this information differently. These costs are discussed in section III.G.5 below. Because these clarifying amendments will not change funds' current reporting obligations, we believe there will be no effect on efficiency, competition, or capital formation.

4. *Public Availability of Information*

As we proposed, we are today eliminating the 60-day delay on public availability of Form N-MFP data.[1521] Currently, each money market fund must file information on Form N-MFP electronically within five business days after the end of each month and that information is made publicly available 60 days after the end of the month for which it is filed.

Several commenters objected to our proposed elimination of the 60-day delay, particularly considering the sensitivity of the new lot level security reporting that we had proposed (but, as discussed above, are not adopting).[1522] Other commenters supported shortening the delay to five or ten days (primarily to permit amendments to fix problems in the data if needed),[1523] or eliminating it entirely.[1524]

This delay, which we instituted when we adopted the form in 2010, responded to commenters' concerns regarding potential reactions of investors to the extent of the additional disclosure of funds' portfolio information and shadow NAVs in the form.[1525] Although we expected that, over time, investors and analysts would become more accustomed to the

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1521 *See* rule 30b1-7 (eliminating subsection (b), public availability).

1522 *See, e.g.,* BlackRock II Comment Letter; Legg Mason & Western Asset Comment Letter.

1523 *See, e.g.,* ICI Comment Letter; Federated II Comment Letter; Vanguard Comment Letter.

1524 *See* U.S. Bancorp Comment Letter ("We are in full support of immediate release of a monthly Form N-MFP…").

1525 *See* 2010 Adopting Release, *supra* note 17, at section II.E.2 (noting that there may be less need in the future to require a 60-day delay).

information disclosed about fund portfolios and thus there may be less need in the future to keep the portfolio information private for 60 days, we believed then that the shadow price data should not be made public immediately, at least initially.[1526] However, with experience, we now believe that the immediate release of the shadow price data and other money market fund portfolio security data would not be harmful and that investors may benefit from more timely access to the data. This is based, in part, on our understanding that many money market funds now disclose their shadow prices every business day on their websites, and frequently provide lists of holdings and information about liquidity to the public as well.

Several commenters requested that if we eliminated the public availability delay that we lengthen the 5-day filing time period in light of the increased reporting requirements under the amended form, in order to provide additional time to fix any potential errors.[1527] As discussed above, we are not adopting some of the more extensive reporting requirements that we proposed (such as lot level security reporting) and we have streamlined and revised other requirements to better ease the filing burden. In addition, the longer the filing period provided, the more it increases the risk of staleness in the reported data and thereby reduces its usefulness to the Commission and to the public. We do not believe providing a filing period of longer than 5 days is necessary, in part because we are not adopting some of the more onerous reporting requirements we proposed, and in part because in our experience, less than 0.5% of money market funds have needed to make amendments to Form N-MFP filings after the reporting deadline to fix reporting issues in their filings. This leads us to believe that the value of

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1526 *See* 2010 Adopting Release, *supra* note 17, at text accompanying nn.329-343.

1527 *See, e.g.*, ICI Comment Letter; Dechert Comment Letter; Schwab Comment Letter.

immediate public access to the data justifies the risk of needing to make amendments. Accordingly, we are not changing the current 5-day reporting period at this time.

Eliminating the 60-day delay will provide more timely information to the public and greater transparency of money market fund information, which could promote efficiency. This disclosure could also make the monthly disclosure on Form N-MFP more relevant to investors, financial analysts, and others by improving their ability to more timely assess potential risks and make informed investment decisions. In other words, investors may be more likely to use the reported information because it is more timely and informative. Because, as discussed above, shadow prices (which were a primary reason why we adopted the 60-day delay in making filings public) have been disclosed by a number of money market funds since February 2013 apparently without incident, we do not believe that eliminating the 60-day delay would affect capital formation.

5. Operational Implications of the N-MFP Amendments

We anticipate that fund managers would incur costs relating to reporting the new items of information we are requiring on Form N-MFP. To reduce costs, we have decided to make needed improvements to the form at the same time we are making amendments necessitated by the amendments to rule 2a-7 we are adopting.[1528] We note that the clarifying amendments should not affect, or should only minimally affect, current filing obligations or the information content of the filings.

As we discussed in the proposal, we expect that the operational costs to money market

[1528] One commenter noted the benefit of consolidating changes to the form at a single time, noting that each time they have to amend their systems to report new information to the Commission on Form N-MFP they incur significant technology related costs. *See* Dreyfus Comment Letter.

funds to report the information required in proposed Form N-MFP would be the same costs we discuss in the Paperwork Reduction Act analysis in section IV of the Release, below, and we requested comment on that belief.[1529] No commenters provided specific data or estimates regarding the cost estimates we provided in the Proposing Release for the amendments to Form N-MFP, although some suggested that the costs of some amendments could be significant.[1530] As discussed above, we have revised the final amendments from our proposal in a number of ways in order to reduce costs to the extent feasible and still achieve our goals of enhancing and improving the monitoring of money market fund risks. Accordingly, we continue to expect that the operational costs to money market funds to report the information required in Form N-MFP would be the same costs we discuss in the Paperwork Reduction Act analysis in section IV.C.3 of the Release, below, which have been reduced to account for the changes we are making from the proposal, as discussed in that section. As discussed in more detail in that section, we estimate that our amendments to Form N-MFP will result in first-year aggregate additional 47,515 burden hours at a total time cost of $12.3 million plus $356,256 in total external costs for all funds, and 33,540 burden hours at a total time cost of $8.7 million plus $356,256 in total external costs for all funds each year hereafter.[1531]

H. Amendments to Form PF Reporting Requirements

Today the Commission is also amending Form PF, the form that certain investment advisers registered with the Commission use to report information regarding the private funds they manage. Among other things, Form PF requires advisers to report certain information about

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[1529] *See* Proposing Release *supra* note 25, at section III.H.6.

[1530] *See, e.g.,* Fidelity Comment Letter.

[1531] *See infra* section IV.C.3.

the "liquidity funds" they manage, which are private funds that seek to maintain a stable NAV (or minimize fluctuations in their NAVs) and thus can resemble money market funds.[1532] In the proposal, we noted a concern that some of the proposed reforms could result in assets shifting from registered money market funds to unregistered products such as liquidity funds, and we proposed amendments to Form PF to, in part, help the Commission and FSOC track any such potential shift in assets and better understand the risks associated with it.[1533]

Most commenters who addressed the proposed PF amendments supported them, agreeing that they would help track such a potential shift,[1534] and one commenter objected, urging the Commission to consider the significant costs, and questioning the potential benefits.[1535] As discussed in greater detail below, we have considered the costs of filing this information with us, and believe that they are justified by the significant benefits to the Commission and FSOC in better enabling us to track and respond to potential shifts in assets from registered money market funds into unregistered alternatives. Accordingly, today we are adopting the Form PF amendments largely as proposed, with some revisions to respond to comments and correspond the reporting as much as possible to the amendments we are making to Form N-MFP.

We adopted Form PF, as required by the Dodd-Frank Act,[1536] to assist in the monitoring

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1532 For purposes of Form PF, a "liquidity fund" is any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors. *See* Form PF: Glossary of Terms.

1533 *See* Proposing Release, *supra* note 25, at section I.

1534 *See, e.g.*, Goldman Sachs Comment Letter; ICI Comment Letter; Oppenheimer Comment Letter.

1535 *See* SSGA Comment Letter.

1536 *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71128 (Nov. 16, 2011)] ("Form PF Adopting Release") at section I. Form PF is a joint form between the Commission and the CFTC only with respect to sections 1 and 2 of the Form; section 3, which we are amending today, and section 4 were adopted only by the Commission. *Id.*

and assessment of systemic risk; to provide information for FSOC's use in determining whether and how to deploy its regulatory tools; and to collect data for use in our own regulatory program.[1537] As discussed in more detail below, the Commission and FSOC have recognized the potentially increased significance of cash management products other than money market funds, including liquidity funds, after the money market fund reforms we are adopting today are effective.[1538] Therefore, to enhance the ability to monitor and assess the short-term financing markets and to facilitate our oversight of those markets and their participants, we are today requiring large liquidity fund advisers—registered advisers with $1 billion or more in combined money market fund and liquidity fund assets—to file virtually the same information with respect to their liquidity funds' portfolio holdings on Form PF as money market funds are required to file on Form N-MFP.[1539]

As discussed in the Proposing Release, we share the concern expressed by some commenters that, if the money market fund reforms we are adopting today cause investors to

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1537 Although Form PF is primarily intended to assist FSOC in its monitoring obligations under the Dodd-Frank Act, we also may use information collected on Form PF in our regulatory program, including examinations, investigations, and investor protection efforts relating to private fund advisers. *See* Form PF Adopting Release, *supra* note 1536, at sections II and VI.A.

1538 *See infra* note 1565 and accompanying text.

1539 As we proposed, we are incorporating in a new Question 63 in section 3 of Form PF the substance of virtually all of the questions on Part C of Form N-MFP as amended, except that we have modified the questions where appropriate to reflect that liquidity funds are not subject to rule 2a-7 (although some liquidity funds have a policy of complying with rule 2a-7's risk-limiting conditions) and have not added questions that would parallel Items C.7 and C.9 of amended Form N-MFP. As we proposed, we are not including a question that would parallel Item C.7 because that item relates to whether a money market fund is treating the acquisition of a repurchase agreement as the acquisition of the collateral for purposes of rule 2a-7's diversification testing; liquidity funds, in contrast, are not subject to rule 2a-7's diversification limitations, and the information on repurchase agreement collateral we are collecting through new Question 63(g) on Form PF would allow us to better understand liquidity funds' use of repurchase agreements and their collateral. Item C.9 asks whether a portfolio security is a rated first tier security, rated second tier security, or no longer an eligible security. As we proposed, we are not including a parallel question in Form PF because these concepts would not necessarily apply to liquidity funds, and we believe the additional questions on Form PF would provide sufficient information about a portfolio security's credit quality and the large liquidity fund adviser's use of credit ratings.

seek alternatives to money market funds, including private funds that seek to maintain a stable NAV but that are not registered with the Commission, this shift could increase risk by reducing transparency of the potential purchasers of short-term debt instruments.[1540] We discuss in detail the potential for money market fund investors to reallocate their assets to alternative investments in section III.A.1.c.iv above.

The amendments that we are adopting to Form PF today are designed to achieve two primary goals. First, they are designed to ensure to the extent possible that any further money market fund reforms do not decrease transparency in the short-term financing markets, which will better enable FSOC to monitor and address any related systemic risks and better enable us to develop effective regulatory policy responses to any shift in investor assets. Second, the amendments to Form PF are designed to enable more effective administration of relevant regulatory programs even if investors do not shift their assets as a result the amendments we are adopting today, as the increased transparency concerning liquidity funds, combined with information we already collect on Form N-MFP, will provide a more complete picture of the short-term financing markets in which liquidity funds and money market funds both invest.

1. Overview of Proposed Amendments to Form PF

Our Form PF amendments apply only to large liquidity fund advisers, which generally are SEC-registered investment advisers that advise at least one liquidity fund and manage, collectively with their related persons, at least $1 billion in combined liquidity fund and money market fund assets.[1541] Large liquidity fund advisers today are required to file information on

1540 *See* Proposing Release, *supra* note 25, n.803.

1541 An adviser is a large liquidity fund adviser if it has at least $1 billion combined liquidity fund and money market fund assets under management as of the last day of any month in the fiscal quarter immediately

Form PF quarterly, including certain information about each liquidity fund they manage.[1542] Under our final amendments, for each liquidity fund it manages, a large liquidity fund adviser would be required to provide, quarterly and with respect to each portfolio security, the following information for each month of the reporting period:[1543]

- the name of the issuer;
- the title of the issue;
- certain security identifiers;
- the category of investment[1544] (*e.g.*, Treasury debt, U.S. government agency debt, asset-backed commercial paper, certificate of deposit, repurchase agreement[1545]);

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preceding its most recently completed fiscal quarter. *See* Form PF: Instruction 3 and Section 3. This $1 billion threshold includes assets managed by the adviser's related persons, except that an adviser is not required to include the assets managed by a related person that is separately operated from the adviser. *Id.* An adviser's related persons include persons directly or indirectly controlling, controlled by, or under common control with the investment adviser. *See* Form PF: Glossary of Terms (defining the term "related person" by reference to Form ADV). Generally, a person is separately operated from an investment adviser if the adviser: (1) has no business dealings with the related person in connection with advisory services the adviser provides to its clients; (2) does not conduct shared operations with the related person; (3) does not refer clients or business to the related person, and the related person does not refer prospective clients or business to the adviser; (4) does not share supervised persons or premises with the related person; and (5) has no reason to believe that its relationship with the related person otherwise creates a conflict of interest with the adviser's clients. *See* Form PF: Glossary of Terms (defining the term by reference to Form ADV).

1542 *See* Form PF Instruction 3 and section 3. This in contrast to Form N-MFP, which is filed on a monthly basis. As discussed below, we currently believe that quarterly filing of this information most appropriately balances our need for this information with the burdens of filing the data, especially considering that large liquidity fund advisers file information quarterly already about the funds they advise, but do not currently file portfolio information about those funds.

1543 *See* Form PF Question 63. Advisers will be required to file this information with their quarterly liquidity fund filings with data for the quarter broken down by month. Advisers will not be required to file information on Form PF more frequently as a result of today's proposal because large liquidity fund advisers already are required to file information each quarter on Form PF. *See* Form PF Instruction 9.

1544 As under amended Form N-MFP, we are revising the investment categories form the proposal in the same way to more accurately reflect the investment categories commonly used today. *See supra* section III.G.2.g.

1545 For repurchase agreements we are also requiring large liquidity fund advisers to provide additional information regarding the underlying collateral and whether the repurchase agreement is "open" (*i.e.*, whether the repurchase agreement has no specified end date and, by its terms, will be extended or "rolled"

- if the rating assigned by a credit rating agency played a substantial role in the liquidity fund's (or its adviser's) evaluation of the quality, maturity or liquidity of the security, the name of each credit rating agency and the rating each credit rating agency assigned to the security;
- the maturity date used to calculate weighted average maturity;
- the maturity date used to calculate weighted average life;
- the ultimate legal maturity date;[1546]
- whether the instrument is subject to a demand feature, guarantee, or other enhancements, and information about any of these features and their providers;
- the value of the fund's position in the security and, if the fund uses the amortized cost method of valuation, the amortized cost value, in both cases with and without any sponsor support;
- the percentage of the liquidity fund's assets invested in the security;
- whether the security is categorized as a level 3 asset or liability on Form PF;[1547]
- whether the security is an illiquid security, a daily liquid asset, and/or a weekly liquid asset, as defined in rule 2a-7; and
- any explanatory notes.[1548]

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each business day (or at another specified period) unless the investor chooses to terminate it). As under amended Form N-MFP, we are not adopting the proposed CUSIP reporting requirement, and we are amending the proposed repurchase agreement collateral investment categories to better align with the categories used by the NY Fed. *See supra* section III.G.3.

1546 We are changing this from "final" as proposed to "ultimate" for the same reasons we are making this change in Form N-MFP. *See supra* note 1503.

1547 *See* Form PF Question 14. *See also infra* notes 1466-1470 and accompanying and following text.

1548 We are also defining the following terms in Form PF, as proposed: conditional demand feature; credit

These amended reporting requirements are largely the same as the reporting requirements for registered money market funds under amended Form N-MFP, with some modifications to better tailor the reporting to private liquidity funds. As we proposed, the final amendments will also remove current Questions 56 and 57 on Form PF. These questions generally require large liquidity fund advisers to provide information about their liquidity funds' portfolio holdings broken out by asset class (rather than security by security). We will be able to derive the information currently reported in response to those questions from the new portfolio holdings information we propose to require advisers to provide. The amendments will also require, as proposed, large liquidity fund advisers to identify any money market fund advised by the adviser or its related persons that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a liquidity fund the adviser reports on Form PF.[1549]

After considering the comments received and the importance and utility of the information that would be reported on amended Form PF (as discussed further below), we are today adopting the Form PF amendments substantially as proposed. As noted above, most commenters who discussed the Form PF amendments generally supported them,[1550] although one commenter objected, suggesting that the costs of compliance would outweigh the benefits.[1551]

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rating agency; demand feature; guarantee; guarantor; and illiquid security. *See* Form PF: Glossary of Terms.

1549 *See* Form PF Question 64. This question is based on the current definition of a "parallel fund structure" in Form PF. *See* Form PF: Glossary of Terms (defining a "parallel fund structure" as "[a] structure in which one or more private funds (each, a 'parallel fund') pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund").

1550 *See, e.g.*, Goldman Sachs Comment Letter; ICI Comment Letter; Oppenheimer Comment Letter.

1551 SSGA Comment Letter.

We have made a number of modifications to the Form PF reporting requirement, such as removing lot level purchase and sale reporting, that should help minimize costs and ease the burden. Nonetheless, we recognize that there are costs to filing this information with us which are discussed in detail below, and believe that they are justified by the significant benefits to FSOC and the Commission in better enabling tracking and responding to potential shifts in assets from registered money market funds into unregistered alternatives.

Another commenter suggested that we reorganize and consolidate the questions in the proposed form amendments to minimize the system changes necessary to file the form.[1552] We agree with this commenter and the final amendments have been organized to minimize system changes and costs as much as possible.[1553]

Consistent with our proposed amendments to Form N-MFP, we proposed to require large liquidity fund advisers to provide lot level information about any securities purchased or sold by their liquidity funds during the reporting period, including sale and purchase prices.[1554] As discussed in section III.G.2.c above, we have been persuaded by commenters that the costs of such reporting do not justify the potential benefits at this time, and that the data may be better collected on a more systematic market wide basis. Accordingly, we are not today adopting the proposed lot level reporting for Form PF.[1555]

1552 Comment Letter of Axiom SL (Aug. 28, 2013) ("Axiom Comment Letter").

1553 By eliminating lot level sale data reporting (proposed question 64 of Form PF) and accordingly renumbering proposed question 65 (parallel funds) as question 64, we have restructured the amendments to Form PF so that the amendments keep the same numbering range as the current form like the commenter suggested. *See* Form PF Question 64.

1554 *See* proposed Form PF Question 64. *See also supra* notes 1474-1475 and accompanying text.

1555 *See supra* note 1476 and accompanying text. Although as discussed above, we are not adopting the lot level reporting requirements generally, we are adopting a requirement to report the coupon or yield of the security as of the reporting date. We proposed to include this reporting requirement with the other lot level

One commenter suggested that Form PF be filed monthly like N-MFP, rather than on a quarterly basis, to better align the information in the two forms,[1556] although another comment opposed such a monthly filing requirement.[1557] We are not requiring monthly filing of Form PF at this time because we believe the ongoing costs and system changes necessary for large liquidity funds to make such a monthly filing would not be justified by the utility of more frequent filing, especially in light of the fact that these funds currently file Form PF on a quarterly basis and these amendments are an enhancement to that filing. To require large liquidity advisers to move to a monthly reporting schedule would impose significant new costs, over and above the costs associated with the Form PF amendments we are adopting today, requiring these advisers to change systems and processes designed for quarterly reporting to a monthly schedule. As noted above, several reporting requirements do ask for information on a monthly basis within the quarterly filed Form PF, which should allow an effective comparison of the data to the information collected on Form N-MFP and will allow for effective oversight of investment activities of large liquidity advisers.

Another commenter asked that we exempt unregistered money market funds from filing the Form PF amendments if the unregistered money market fund is exclusively owned by registered funds investing in an unregistered fund pursuant to rule 12d1-1 under the Investment

reporting questions. *See* proposed Form PF Question 63(o). Reporting this information would not require the use of lot level data, and thus should not pose the same difficulties as the other reporting requirements we are not adopting. Much like under the final amendments to Form N-MFP, the final Form PF amendments would include reporting of the coupon in the title of the issue but information about yield would be in a standalone question. *See* proposed Form PF Questions 63(c) and 63(o). As a result of not adopting question 64 about lot level sales, we are also renumbering proposed question 65 on parallel funds as question 64 and relabeling the Item as F rather than Item G. *See* Form PF Item F, Question 64.

1556 ICI Comment Letter.

1557 Oppenheimer Comment Letter.

Company Act.[1558] Rule 12d1-1 permits a registered fund to invest in an unregistered money market fund in excess of the limits of section 12(d)(1) of the Act, provided, among other things, that the unregistered fund operates in compliance with rule 2a-7 of the Act. The commenter argued that because these funds are exclusively owned by registered funds, any shift in assets to these unregistered money market funds would not represent the kind of shift that the Form PF amendments are designed to monitor, and thus such 12d1-1 funds should not be required to bear the burdens of filing the Form PF amendments. Our amendments to Form PF are designed, in part, to allow better monitoring of risks associated with investments in money market instruments and to generally track and monitor money market asset flows. Exempting such funds from filing amended Form PF would not be consistent with this goal, and could leave a significant gap in our ability to monitor and track money market instrument holdings. In the absence of the Form PF portfolio security reporting requirements, if there was a shift in assets from registered money market funds that file portfolio holdings reports under Form N-MFP to unregistered 12d1-1 funds that do not file such information about their holdings, we and FSOC would lose significant transparency and monitoring ability. Accordingly, we are not adopting such an exemption.

2. *Utility of New Information, Including Benefits, Costs, and Economic Implications*

As discussed in the 2013 Proposing Release, the information that advisers must report on Form PF (both currently and under the final amendments) concerning their liquidity funds is designed to assist FSOC in assessing the risks undertaken by liquidity funds, their susceptibility to runs, and how their investments might pose systemic risks either among liquidity funds or

1558 *See* Wells Fargo Comment Letter.

through contagion to registered money market funds.[1559] The information that advisers must report is intended to aid FSOC in its determination of whether and how address issues related to systemic risk.[1560] Finally, the information that advisers must report is designed to assist FSOC and the Commission in assessing the extent to which a liquidity fund is being managed consistent with restrictions imposed on registered money market funds that might mitigate their likelihood of posing systemic risk.

We believe, based on our staff's consultations with staff representing the members of FSOC, that the additional information we are requiring advisers to report on Form PF will assist FSOC in carrying out these responsibilities. Several commenters agreed that the Form PF amendments will assist FSOC and the Commission in these responsibilities.[1561] FSOC and the Commission have recognized the risks that may be posed by cash management products other than money market funds, including liquidity funds, and the potentially increased significance of such products after we adopt the money market fund reforms we are making today.[1562] FSOC has

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1559 *See* Form PF Adopting Release, *supra* note 1536, at section II.C.3.

1560 *Id.*

1561 *See* Goldman Sachs Comment Letter (the PF amendments will "...assist the Financial Stability Oversight Council in fulfilling its responsibilities and better enable the Commission to develop effective regulatory policy responses to any shift in investor assets from money funds to private liquidity funds."); ICI Comment Letter.

1562 *See* Proposed Recommendations Regarding Money Market Mutual Fund Reform, Financial Stability Oversight Council [77 FR 69455 (Nov. 19, 2012)] (the "FSOC Proposed Recommendations"), at 7 ("The Council recognizes that regulated and unregulated or less-regulated cash management products (such as unregistered private liquidity funds) other than MMFs may pose risks that are similar to those posed by MMFs, and that further MMF reforms could increase demand for non-MMF cash management products. The Council seeks comment on other possible reforms that would address risks that might arise from a migration to non-MMF cash management products.") We, too, have recognized that "[l]iquidity funds and registered money market funds often pursue similar strategies, invest in the same securities and present similar risks." *See* Form PF Adopting Release, *supra* note 1536, at section II.A.4. *See also Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, Investment Advisers Act Release No. 3145 (Jan. 26, 2011) [76 FR 8068 (Feb. 11, 2011)] ("Form PF Proposing Release"), at note 68 and accompanying text (explaining that, "[d]uring the financial crisis, several sponsors of 'enhanced cash funds,' a type of liquidity fund, committed capital to also stated that it and its members "intend to use their authorities, where appropriate and within their jurisdictions, to address any risks to financial stability that may arise from various products within the cash management industry in a consistent manner," as "[s]uch consistency would be designed to reduce or eliminate any regulatory gaps that could result in risks to financial stability if cash management products with similar risks are subject to dissimilar standards."[1563] We expect, therefore, that requiring advisers to provide additional information on Form PF will enhance the ability to monitor and assess risk in the short-term financing markets.

We are requiring only large liquidity fund advisers to report this additional information for the same reason that we previously determined to require only larger private fund advisers to provide more comprehensive information on their respective industries on Form PF: because a relatively small group of advisers represents a substantial portion of the assets.[1564] Based on information filed on Form PF and Form ADV, as of the end of 2013, we estimate that there were approximately 24 large liquidity fund advisers (out of 43 total advisers that advise at least one liquidity fund), with their aggregate liquidity fund assets under management representing approximately 91% of liquidity fund assets managed by all advisers registered with the Commission.

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those funds to prevent investors from realizing losses in the funds," and noting that "[t]he fact that sponsors of certain liquidity funds felt the need to support the stable value of those funds suggests that they may be susceptible to runs like registered money market funds").

1563 *See* FSOC Proposed Recommendations, *supra* note 1562, at 7. The President's Working Group on Financial Markets reached a similar conclusion, noting that because vehicles such as liquidity funds "can take on more risks than MMFs, but such risks are not necessarily transparent to investors…, unregistered funds may pose even greater systemic risks than MMFs, particularly if new restrictions on MMFs prompt substantial growth in unregistered funds." *See* PWG Report, *supra* note 506, at 21. The potentially increased risks posed by liquidity funds were of further concern because these risks "are difficult to monitor, since [unregistered cash management products like liquidity funds] provide far less market transparency than MMFs." *Id.* at 35.

1564 *See* Form PF Adopting Release, *supra* note 1536, at n.88 and accompanying text.

This threshold also should minimize the costs of our amendments because large liquidity fund advisers already are required to make quarterly reports on Form PF and, as of the end of 2013, virtually all either advise a money market fund or have a related person that advises a money market fund. Requiring large liquidity fund advisers to provide substantially the same information required by Form N-MFP therefore may reduce the burdens associated with our amendments, which we discuss below, because large liquidity fund advisers generally already have (or may be able to readily obtain access to) the systems, service providers, and/or staff necessary to capture and report the same types of information for reporting on Form N-MFP. These same systems, service providers, and/or staff may allow large liquidity fund advisers to comply with our changes to Form PF more efficiently and at a reduced cost than if we were to require advisers to report information that differed materially from that which the advisers must file on Form N-MFP.

In addition to our concerns about the ability to assess risks associated with money market fund investments, we also are concerned about losing transparency regarding money market fund investments that may shift into liquidity funds as a result of the other reforms we are adopting today and our ability effectively to formulate policy responses to such a shift in investor assets.[1565] We noted in the proposal that a run on liquidity funds could spread to money market funds because, for example, both types of funds often invest in the same securities as noted above.[1566] Our ability to formulate a policy response to address this risk could be diminished if

1565 *See, e.g.*, DERA Study, *supra* note 24, at section 4.C (analysis of investment alternatives to money market funds, considering, among other issues, the potential for investors to shift their assets to money market fund alternatives, including liquidity funds, in response to further money market fund reforms and certain implications of a shift in investor assets).

1566 Liquidity funds may generally have a higher percentage of institutional shareholders than money market we had less transparency concerning the portfolio holdings of liquidity funds as compared to money market funds, and thus were not able as effectively to assess the degree of correlation between various funds or groups of funds that invest in the short-term financing markets, or if we were unable proactively to identify funds that own distressed securities. Several commenters agreed that the Form PF amendments would reduce the chance that these reforms will diminish transparency in the short-term financing markets.[1567] Indeed, Form PF, by defining large liquidity fund advisers subject to more comprehensive reporting requirements as advisers with $1 billion in *combined* money market fund and liquidity fund assets under management today reflects the similarities between money market funds and liquidity funds and the need for comprehensive information concerning advisers' management of large amounts of short-term assets through either type of fund. The need for this comprehensive data will be heightened if money market fund investors shift their assets to liquidity funds in response to the amendments we are adopting today.

Finally, this increased information on liquidity funds managed by large liquidity fund

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funds because liquidity funds rely on exclusions from the Investment Company Act's definition of "investment company" provided by section 3(c)(1) or 3(c)(7) of that Act. *See* section 202(a)(29) of the Advisers Act (defining the term "private fund" to mean an issuer that would be an investment company, as defined in section 3, but for section 3(c)(1) or 3(c)(7) of that Act). Funds relying on those exclusions sell their shares in private offerings which in many cases are restricted to investors who are "accredited investors" as defined in rule 501(a) under the Securities Act. Investors in funds relying on section 3(c)(7), in addition, generally must be "qualified purchasers" as defined in section 2(a)(51) of the Investment Company Act. Having a larger institutional shareholder base may increase the potential for a run to develop at a liquidity fund. As discussed in greater detail in section II.C of this Release, redemption data from the financial crisis suggest that some institutional money market fund investors are likely to redeem from distressed money market funds more quickly than other investors and to redeem a greater percentage of their holdings. This may be indicative of the way institutional investors in liquidity funds would behave, particularly liquidity funds that more closely resemble money market funds.

1567 *See, e.g.*, Goldman Sachs Comment Letter ("Finally, GSAM generally supports the amendments to Form PF, which will ensure that further money market fund reforms do not decrease transparency in the short-term financing markets…'); ICI Comment Letter.

advisers also will be useful even absent a shift in money market fund investor assets resulting from these reforms. Collecting this information about these liquidity funds will, when combined with information collected on Form N-MFP, provides a more complete picture of the short-term financing markets, allowing the SEC and FSOC to more effectively fulfill our respective statutory mandates. For example, we discuss the contagion risk above. But it may be difficult to assess this risk fully today without more detailed information about the portfolio holdings of the liquidity funds managed by advisers who manage substantial amounts of short-term investments and the ability to combine that data with the information we collect on Form N-MFP.

For example, if a particular security or issuer were to come under stress, without these amendments, our staff would be unable to determine which liquidity funds, if any, held that security, much like before we adopted Form N-MFP for registered money market funds. This is because advisers currently are required only to provide information about the types of assets their liquidity funds hold, rather than the individual positions.[1568] Our staff could see the aggregate value of all of a liquidity fund's positions in unsecured commercial paper issued by non-U.S. financial institutions, for example, but could not tell whether the fund owned commercial paper issued by any particular non-U.S. financial institution. If a particular institution were to come under stress, the aggregated information available today would not allow us or our staff to determine the extent to which liquidity funds were exposed to the financial institution; lacking this information, neither we nor our staff would be able as effectively to assess the risks across the liquidity fund industry and, by extension, the short-term financing markets.

1568 *See* Form PF Question 56 (requiring advisers to provide exposures and maturity information, by asset class, for liquidity fund assets under management); Form PF Question 57 (requiring advisers to provide the asset class and percent of the fund's NAV for each open position that represents 5% or more of the fund's NAV).

Position level information for liquidity funds managed by large liquidity fund advisers also will allow our staff more efficiently and effectively to identify longer-term trends in the industry and at particular liquidity funds or advisers. The aggregated position information that advisers provide today may obscure the level of risk in the industry or at particular advisers or liquidity funds that, if more fully understood by our staff, could allow the staff to more efficiently and effectively target our examinations efforts of these advisers, and could better inform the staff's policy recommendations.

As we discussed in the proposal, our experience with the portfolio information money market funds report on Form N-MFP—which was limited at the time we adopted Form PF—has proved useful in our regulation of money market funds in these and other ways and has informed the amendments we are adopting today.[1569] During the 2011 Eurozone debt crisis, for example, we and our staff benefitted from the ability to determine which money market funds had exposure to specific financial institutions (and other positions) and from the ability to see how funds changed their holdings as the crisis unfolded. This information was useful in assessing risk across the industry and at particular money market funds. Given the similarities between money market funds and liquidity funds and the possibility for risk to spread between the types of funds, our experience with portfolio information filed on Form N-MFP suggests that receiving virtually the same information for liquidity funds managed by large liquidity fund advisers will provide significant benefits to oversight efforts.

For all of these reasons and as discussed above, we expect that requiring large liquidity

1569 Money market funds were required to begin filing information on Form N-MFP by December 7, 2010. *See* 2010 Adopting Release, *supra* note 17 at n.340 and accompanying text. Form PF was proposed shortly thereafter on January 26, 2011, and adopted on October 31, 2011. *See* Form PF Proposing Release, *supra* note 1562; Form PF Adopting Release, *supra* note 1536.

fund advisers to report their liquidity funds' portfolio information on Form PF as we are requiring today will provide substantial benefits for us and FSOC, including positive effects on efficiency and capital formation. As we explained in more detail when we initially adopted Form PF, requiring advisers to report on Form PF is intended to positively affect efficiency and capital formation, in part by enhancing our ability to evaluate and develop regulatory policies and to more effectively and efficiently protect investors and maintain fair, orderly, and efficient markets.[1570]

The additional information on Form PF should better inform our understanding of the activities of liquidity funds and their advisers and the operation of the short-term financing markets, including risks that may arise in liquidity funds and harm other participants in those markets or those who rely on them—including money market funds and their shareholders and the companies and governments that seek financing in the short-term financing markets. The additional information that advisers will report on Form PF, particularly when combined with similar data reported on Form N-MFP, therefore should enhance our ability to evaluate and develop regulatory policies and enable us to more effectively and efficiently protect investors and maintain fair, orderly, and efficient markets.

As discussed in detail in the proposal, we recognize that large liquidity fund advisers may

1570 *See generally* Form PF Adopting Release, *supra* note 1536, at section V.A (explaining that, in addition to assisting FSOC fulfill its mission, "we expect this information to enhance [our] ability to evaluate and develop regulatory policies and improve the efficiency and effectiveness of our efforts to protect investors and maintain fair, orderly, and efficient markets"). We explained, for example, that Form PF data was designed to allow us to more efficiently and effectively target our examination programs and, with the benefit of Form PF data, to better anticipate regulatory problems and the implications of our regulatory actions, and thereby to increase investor protection. *See id.* We also explained that Form PF data could have a positive effect on capital formation because, as a result of the increased transparency to regulators made possible by Form PF, private fund advisers might assess more carefully the risks associated with particular investments and, in the aggregate, allocate capital to investments with a higher value to the economy as a whole. *See id.* at text accompanying and following n.494.

have concerns about reporting information about their liquidity funds' portfolio holdings and may regard this as commercially sensitive information, but noted that such data may be not be as sensitive in this context when compared to other private funds, largely because of the types of securities that liquidity funds invest in.[1571] No commenters on the proposed Form PF amendments objected to the amendments on the basis of the information being sensitive or proprietary. As we discussed in the Form PF Adopting Release, we do not intend to make public Form PF information identifiable to any particular adviser or private fund, and indeed, the Dodd-Frank Act amended the Advisers Act to preclude us from being compelled to reveal this information except in very limited circumstances.[1572]

We note that although the increased transparency to regulators provided by our amendments could positively affect capital formation as discussed above, increased transparency, as we observed when adopting Form PF, also may have a negative effect on capital formation if it increases advisers' aversion to risk and, as a result, reduces investment in enterprises that may expose the fund to more risk but be beneficial to the economy as a whole.[1573] Nevertheless, the information collected generally will be non-public, it should not affect large liquidity fund advisers' ability to raise capital. To the extent that our amendments were to cause changes in investment allocations that lead to reduced economic outcomes in the aggregate, our amendments may result in a negative effect on capital available for investment.

We also do not believe that our amendments to Form PF will have a significant effect on competition because the information that advisers report on Form PF, including the new

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1571 *See* Proposing Release, *supra* note 25, at Section I.2.

1572 *See* Form PF Adopting Release, *supra* note 1536, at section II.D.

1573 *See id.* at text accompanying and following n.537.

information we are requiring, generally will be non-public and similar types of advisers will have comparable burdens under the form as we propose to amend it.[1574] We do not believe the amendments' effect on capital formation discussed above will be significant, again because the information collected generally will be non-public and, therefore, should not affect large liquidity fund advisers' ability to raise capital.[1575]

j. Alternatives Considered

We considered whether we and FSOC would be able as effectively to carry out our respective missions as discussed above using the information large liquidity fund advisers currently must file on Form PF. But as we discuss above, we expect that requiring large liquidity funds advisers to provide portfolio holdings information will provide a number of benefits and will allow better understanding of the activities of large liquidity fund advisers and their liquidity funds than would be possible with the higher level, aggregate information that advisers file today on Form PF (*e.g.*, the ability to determine which liquidity funds own a distressed security).

For the reasons discussed above we also considered, but ultimately chose not to adopt, changes requiring advisers to file portfolio information about their liquidity funds that differs from the information money market funds are required to file on Form N-MFP. Generally, given our experience with Form N-MFP data, we believe that not only could different portfolio holdings information be less useful than that required by Form N-MFP, it also could be more difficult to combine with Form N-MFP data. Requiring advisers to file on Form PF virtually the same information money market funds file on Form N-MFP also should be more efficient for

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1574 *See id.* at text accompanying and following n.535.

1575 *See id.*

advisers and reduce the costs of reporting from a systems standpoint, because many large liquidity advisers also manage money market funds and already have the systems in place to report the data.

Finally, we considered whether to require large liquidity fund advisers to provide their liquidity funds' portfolio information more frequently than quarterly, but as discussed in greater detail above, chose not to adopt this requirement.[1576] Monthly filings, for example, would provide more current data and could facilitate our combining the new information with the information money market funds file on Form N-MFP (which money market funds file each month). We balanced the potential benefits of more frequent reporting against the costs it would impose and believe, at this time, that quarterly reporting is more appropriate.[1577]

k. Operational Costs

We recognize, however, that our amendments to Form PF, while limited to large liquidity fund advisers, will create some costs for those advisers, and also could affect competition, efficiency, and capital formation. We continue to expect that the operational costs to advisers to report the new information will be the same costs we discuss in the Paperwork Reduction Act analysis in section IV.H.3 below, as reduced by the lower costs associated with the changes we are making from the proposal discussed in that section. As discussed in more detail in that section, we estimate that our amendments to Form PF would result in an annual aggregate additional burden per large liquidity fund adviser of 298 burden hours, at a total time cost of

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1576 *See supra* note 1556.

1577 Large liquidity fund advisers already are required to make quarterly filings on Form PF. *See* Form PF Instruction 9. Requiring large liquidity fund advisers to provide the new portfolio holdings information on a quarterly basis should therefore be more cost effective for the advisers.

$79,566, and external costs of $17,104. This will result in increased aggregate burden hours across all large liquidity fund advisers of 8,344 burden hours,[1578] at a time cost of $2,227,848, and $478,912 in external costs.[1579]

These estimates are based on our estimates of the paperwork burdens associated with our final amendments to Form N-MFP because advisers will be required to file on Form PF virtually the same information about their large liquidity funds as money market funds will be required to file on Form N-MFP as we are amending it. We therefore expect that the paperwork burdens associated with Form N-MFP (as we are amending it) are representative of the costs that large liquidity fund advisers will incur as a result of our amendments to Form PF. We note, however, that this is a conservative approach for several reasons. Large liquidity fund advisers may experience economies of scale because, as discussed above, virtually all of them advise a money market fund or have a related person that advises a money market fund. Large liquidity fund advisers therefore likely will pay a combined licensing fee or fee to retain the services of a third party that covers filings on both Forms PF and Form N-MFP. We expect that this combined fee likely will be less than the combined estimated Paperwork Reduction Act costs associated with Forms PF and Form N-MFP.

I. Diversification

We are amending the rule 2a-7 diversification provisions as proposed, with certain modifications as discussed below. Under the current rule, money market funds generally must limit their investments in: (i) the securities of any one issuer of a first tier security (other than

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1578 This estimate is based on the following calculation: 298 estimated additional burden hours per large liquidity fund adviser x 28 large liquidity fund advisers = 8,344.

1579 *See infra* section IV.H.3.

with respect to government securities and securities subject to a guarantee issued by a non-controlled person) to no more than 5% of fund assets; and (ii) securities subject to a demand feature or a guarantee to no more than 10% of fund assets from any one provider.[1580] Under our diversification amendments, we are requiring that money market funds treat certain entities that are affiliated with each other as single issuers when applying rule 2a-7's 5% issuer diversification limit.[1581] As discussed further below, the amended diversification provisions exclude certain majority equity owners of asset-backed commercial paper ("ABCP") conduits from the requirement to aggregate affiliates for purposes of the 5% issuer diversification limit. The diversification provisions that we are adopting today also require that a money market fund treat the sponsors of asset-backed securities ("ABS") as guarantors subject to rule 2a-7's 10% diversification limit applicable to guarantees and demand features, unless the fund's board makes certain findings.[1582] Lastly, we have decided to adopt (i) as proposed, the removal of the twenty-five percent basket, under which as much as 25% of the value of securities held in a money market fund's portfolio may be subject to guarantees or demand features from a single institution for money market funds other than tax-exempt money market funds, and (ii) the reduction to 15%, rather than the elimination of, the twenty-five percent basket for tax-exempt money market funds, including single state money market funds. Under our amendments, up to 15% (as compared to 10%, which was proposed) of the value of securities held in a tax-exempt money

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[1580] *See* current rules 2a-7(c)(4)(i) and (c)(4)(iii). The current rule also provides a "twenty-five percent basket," under which as much as 25% of the value of securities held in a fund's portfolio may be subject to guarantees or demand features from a single institution. *See* current rule 2a-7(c)(4)(iii). A money market fund may currently use a twenty-five percent basket to invest in demand features or guarantees that are first tier securities issued by non-controlled persons. *See id.*

[1581] *See* rule 2a-7(d)(3)(ii)(F).

[1582] *See* rule 2a-7(a)(18)(ii) (definition of guarantee).

market fund's portfolio may be subject to guarantees or demand features from a single institution.[1583]

1. Treatment of Certain Affiliates for Purposes of Rule 2a-7's Five Percent Issuer Diversification Requirement

As noted above, today we are amending rule 2a-7's diversification provisions to provide that money market funds limit their exposure to affiliated groups, rather than to discrete issuers.[1584] As discussed in the Proposing Release, financial distress at an issuer can quickly spread to affiliates and the valuations and creditworthiness of the issuer may depend, in large part, on the financial well-being of other firms within the same corporate family.[1585] By requiring diversification of exposure to entities that are affiliated with each other, the rule mitigates credit risk to a money market fund by limiting the fund from assuming a concentrated amount of risk in a single economic enterprise. Commenters generally supported the proposal to treat certain entities that are affiliated with each other as single issuers when applying rule 2a-7's 5% issuer diversification limit.[1586] Commenters also confirmed our understanding that money market funds today generally attempt to identify and measure their exposure to entities that are affiliated with

1583 *See* rule 2a-7(d)(3)(iii)(B). We note that amended rule 2a-7(d)(3)(iii)(B), which provides a basket for tax-exempt money market funds, has been revised from current rule 2a-7(c)(4)(iii). The revised rule text is intended to be a clarifying change from the current rule text and is not designed to have any substantive effect other than to reduce the twenty-five percent basket to a fifteen percent basket for tax-exempt funds.

1584 As discussed below, entities are "affiliated" with one another if one controls the other entity or is controlled by it or is under common control with it. "Control" for this purpose, is defined to mean ownership of more than 50% of an entity's voting securities. Rule 2a-7(d)(3)(ii)(F)(1). We note that we are not amending rule 2a-7's diversification requirements to require that money market funds treat affiliates as a single entity for purposes of the 10% diversification limit on investments in securities subject to a demand feature or guarantee.

1585 *See* Proposing Release *supra* note 25, at section III.J.1.

1586 *See, e.g.,* ICI Comment Letter; U.S. Bancorp Comment Letter; Goldman Sachs Comment Letter; Dreyfus Comment Letter; Wells Fargo Comment Letter; Vanguard Comment Letter.

each other as part of their risk management processes.[1587] Based on the comments we received, we continue to believe that requiring diversification of exposure to affiliated entities will mitigate a money market fund's credit risk.

a. Definition of control

We are adopting as proposed that, for purposes of applying the amended rule, entities are *affiliated* with one another if one controls the other entity or is controlled by it or is under common control with it.[1588] For this purpose only, *control* is defined to mean ownership of more than 50% of an entity's voting securities.[1589] By using a more than 50% test (*i.e.*, majority ownership), we continue to believe the alignment of economic interests and risks of the affiliated entities is sufficient to justify aggregating their exposures for purposes of rule 2a-7's 5% issuer diversification limit. As discussed in the Proposing Release, we considered several alternative approaches to delineating a group of affiliates. We requested comment as to whether we should use any of these alternative approaches or whether there are other approaches we should consider. A number of commenters supported the proposed majority ownership test.[1590] Some commenters also agreed with us that other approaches to defining control could limit a money market fund's investment flexibility unnecessarily.[1591] One commenter noted that while the

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1587 *See, e.g.,* ICI Comment Letter; U.S. Bancorp Comment Letter; Goldman Sachs Comment Letter; Dreyfus Comment Letter; Vanguard Comment Letter; Federated II Comment Letter.

1588 *See* rule 2a-7(d)(3)(ii)(F).

1589 *See id.* We note that the definition of control we are adopting today with respect to the treatment of affiliates for purposes of issuer diversification under rule 2a-7 is not the same as the definition of control in section 2(a)(9) of the Investment Company Act.

1590 *See, e.g.,* ABA Business Law Section Comment Letter; Wells Fargo Comment Letter.

1591 *See* ICI Comment Letter (stating that a definition of control that would include more attenuated relationships or lower ownership levels could limit a money market fund's investment opportunities to issuers whose risks are not necessarily correlated to the issuer's parents). *See also* Wells Fargo Comment Letter (supporting the decision to not require money market funds to treat as affiliates all entities that must proposed definition of control would not generally limit money market funds' investment flexibility or be difficult to apply, incorporating the definition of a "majority-owned subsidiary" from section 2(a)(24) of the Investment Company Act, rather than introducing a new definition of control, would be more desirable.[1592] Under the section 2(a)(24) definition, a "majority-owned subsidiary" of a person means a company 50% or more of the outstanding voting securities of which are owned by such person, or by a company which is a majority-owned subsidiary of such person.[1593] We note however, that the section 2(a)(24) definition is not in itself a definition of control and only includes the circumstances in which an entity is a majority-owned subsidiary of another entity. Although we requested comment as to whether we should incorporate the section 2(a)(24) definition of majority-owned subsidiaries into our definition of control, we believe that a more than 50% test is indicative of circumstances in which an entity controls another entity or is controlled by it as opposed to circumstances in which an entity owns half of another entity's voting securities. The definition of control we are adopting today is used to define entities that are required to be consolidated for purposes of our diversification requirements. Therefore, we believe it is appropriate to look at the circumstances in which entities generally are required to be consolidated because they represent exposure to a single economic entity. We continue to believe that the approach we are adopting today is preferable because it is consistent with various circumstances under which affiliated entities must be consolidated on financial statements prepared in accordance with GAAP, under which a parent generally must consolidate its

be consolidated on a balance sheet).

1592 *See* ICI Comment Letter.

1593 *See* Section 2(a)(24).

majority-owned subsidiaries.[1594] These majority-owned subsidiaries generally must be consolidated under GAAP because the operations of the group are sufficiently related such that they are presented under GAAP as if they "were a single economic entity."

b. Majority equity owners of asset-backed commercial paper conduits

We requested comment as to whether the exposures to risks of issuers that would be treated as affiliated under our proposal would be highly correlated and whether our proposed approach to delineating affiliates was too broad or too narrow.[1595] After further consideration, based on the comments we received in response to our proposal, we recognize that the majority ownership definition of control that we proposed may encompass certain affiliated parties that are not part of the same economic enterprise and therefore should be excluded from the definition. Accordingly, as discussed further below, the majority ownership definition of control that we are adopting today excludes certain equity owners of ABCP conduits from the requirement to aggregate affiliates for purposes of the 5% issuer diversification limit.[1596]

Without an exclusion from the amended rule, money market funds would be required to aggregate their exposure to the ABCP conduits and to the equity owners of ABCP conduits for purposes of the 5% issuer diversification limit. One commenter argued that we should exclude

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1594 *See, e.g.*, FASB ASC, *supra* note 425, at paragraph 810-10-15-8 ("The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation.").

1595 *See* Proposing Release, *supra* note 25, at section III.J.1.

1596 One commenter suggested that we also exclude TOBs from the amended rule, noting that under certain circumstances liquidity providers may own more than 50 percent of the securities issued by a TOB but may not be part of the same corporate family. *See* SIFMA Comment Letter. We believe that excluding TOBs from the amended rule is unnecessary in light of the fact that an owner of TOB-issued securities would not likely have voting rights in a TOB trust and therefore would not fall under the definition of affiliate for purposes of the 5% issuer diversification limit. We note that the Volcker Rule may likely have an impact on TOB program structures.

equity owners of ABCP conduits from the proposed affiliate aggregation rule to allow money market funds to treat each special purpose entity ("SPE") issuing ABCP as a separate issuer for purposes of issuer diversification, even if the same entity or affiliate group controls the voting equity of multiple ABCP conduits.[1597] This commenter noted that voting equity of an ABCP conduit is typically almost entirely owned by an otherwise unaffiliated third party that is in the business of owning such entities and providing management and administrative services, and not by the ABCP conduit sponsor, and that requiring money market funds to aggregate conduits on the basis of common equity ownership would unnecessarily restrict the amount of ABCP available for purchase by money market funds.[1598] We agree that if certain independent equity owners are simply providing services in a management and administrative capacity and are concentrated in the ABCP industry, failure to provide an exception to those equity owners could unnecessarily limit ABCP investment or reduce economies of scale in ABCP administration with no diversification benefit to money market funds.

The purpose of treating affiliated parties as a single issuer when applying the diversification limit is to mitigate risk to a money market fund by limiting the fund from assuming a concentrated amount of risk in a single economic enterprise, not to limit the exposure to entities that might fall under the definition of "affiliated" but are otherwise independent and not part of the same economic enterprise. In light of these considerations, we have decided to provide an exception from the amended rule for certain independent equity owners of ABCP conduits. The commenter that argued we should exclude equity owners of ABCP conduits

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1597 Comment Letter of Structured Finance Industry Group (Sept. 17, 2013) ("SFIG Comment Letter").

1598 *Id.*

recommended that we provide that money market funds need not aggregate an ABCP conduit and its independent equity owners if owning equity interests in SPEs is a primary line of business of such owner.[1599] This commenter also noted that the voting equity of an ABCP conduit is typically owned by an unaffiliated third party that provides certain management services to the ABCP conduit. In addition, this commenter suggested limiting the exception to those equity owners that are not originating qualifying assets to the ABCP conduits.[1600] We agree with the commenter's statements above and we are providing an exception, which we expect addresses the concerns regarding the current marketplace organization of ABCP conduits. Accordingly, under the exception, money market funds will be subject to the 5% issuer diversification limit on the ABCP conduit and any ten percent obligors,[1601] but need not aggregate an ABCP conduit and its independent equity owners for purposes of the 5% issuer diversification limit provided that a primary line of business of those independent equity owners is owning equity interests in SPEs and providing services to SPEs, the independent equity owners' activities with respect to the SPEs are limited to providing management or administrative services, and no qualifying assets of the ABCP conduit were originated by the equity owners.[1602] Subject to the exception for certain majority equity owners of ABCP conduits, we continue to believe that the majority ownership test appropriately requires a money market fund to limit its exposure to particular economic enterprises without unnecessarily limiting a fund's investments.

1599 *Id.*

1600 *Id.*

1601 *See infra* note 1603 (definition of ten percent obligor).

1602 *See* rule 2a-7(d)(3)(ii)(F)(2).

c. Treatment of affiliates for ten percent obligor determinations

One commenter expressed concern regarding the impact of the proposed diversification amendments on the treatment of ten percent obligors[1603] for ABS.[1604] The commenter noted that currently each ABS issued by a separate entity is analyzed separately, and an ABCP conduit typically represents to money market funds that it does not intend to purchase any ABS which would result in a ten percent obligor.[1605] The commenter expressed concern that, if the proposed treatment of affiliates is made applicable to the ten percent obligor, it is likely that some of the ABS held by an ABCP conduit will need to be aggregated, resulting in ten percent obligors.[1606] This commenter argued that such a result may create legal and practical issues for sponsors, given confidentiality restrictions that may prevent funds from determining which obligors are affiliated, and may not reflect actual risks if such obligors are not part of the same economic enterprise.[1607] In addition, this commenter noted that conduits may restructure their programs to avoid having consolidated affiliate ten percent obligors, which would potentially reduce funding capacity to those obligors.[1608]

We acknowledge that the application of our diversification amendments on the treatment of ten percent obligors may cause certain sponsors to conduct additional due diligence and also

1603 Generally, ABS acquired by a money market fund ("primary ABS") are deemed to be issued by the SPE that issued the ABS (e.g., the trust, corporation, entity organized for sole purpose of issuing the ABS). *See* rule 2a-7(d)(3)(ii)(D)(1). However, if obligations of any issuer constitute 10% or more of the qualifying assets of the primary ABS, that issuer will be deemed to be the issuer of that portion of the primary ABS that is comprised of its obligations ("ten percent obligor"). *See* rule 2a-7(d)(3)(ii)(D)(1)(i).

1604 *See* SFIG Comment Letter. *See also* Memorandum from the Division of Investment Management regarding a September 10, 2013 meeting with representatives of the Structured Finance Industry Group.

1605 *Id.*

1606 *Id.*

1607 *Id.*

1608 *Id.*

may mean that some conduits would have to restructure their programs, which could result in reduced funding capacity from money market funds. However, we understand that these affiliated obligors generally represent exposure to the same economic enterprise. Therefore, after further consideration, we continue to believe that requiring aggregation of obligors in determining whether an obligor is a ten percent obligor reflects our objective.[1609] We continue to believe that by using a more than 50% test, the alignment of economic interests and risks of affiliated obligors is sufficient to justify aggregating their exposures for purposes of applying rule 2a-7's 5% issuer diversification limit. Requiring aggregation of obligors in determining ten percent obligors will require diversification of exposure to obligors that are affiliated with each other, thereby mitigating the credit risk to a money market fund when taking a highly concentrated position in ABS with affiliated obligors.

d. Issuers of securities subject to a guarantee issued by a non-controlled person

Under current rule 2a-7, a money market fund is not required to be diversified with respect to issuers of securities that are subject to a guarantee issued by a non-controlled person.[1610] Under our proposed rule 2a-7 amendments, non-ABS that are subject to a guarantee by a non-controlled person would be subject to rule 2a-7's 10% diversification limit applicable to guarantees and demand features but would continue to have no issuer diversification limit. However, we proposed that a presumed guarantee issued by a sponsor of an SPE with respect to ABS would no longer qualify as a guarantee issued by a non-controlled person, thereby creating

1609 *See* rule 2a-7(d)(3)(ii)(F)(3).

1610 Current rule 2a-7(a)(18). A guarantee issued by a non-controlled person means a guarantee issued by: (i) a person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (control for these purposes means "control" as defined in section 2(a)(9); or (ii) a sponsor of an SPE with respect to ABS. Current rule 2a-7(a)(18)(i) and (ii).

a disparity between treatment because ABS and non-ABS would be treated differently under the proposal.[1611] Therefore, as proposed, ABS would be subject to both a 5% issuer diversification limit on the SPE and any ten percent obligors, and a 10% limit on the sponsor as the presumed guarantor. One commenter mentioned this potential discrepancy and argued that the portion of ABS presumed to be guaranteed by the sponsor should not be subject to the issuer diversification limitations and thus treated parallel with other money market fund portfolio securities subject to a guarantee issued by a non-controlled person.[1612] After further consideration of this disparity in treatment, we preliminarily believe that the approach that most advances our diversification reform goal of limiting concentrated exposure of money market funds to particular economic enterprises is to eliminate the exclusion from the 5% issuer diversification requirement for both ABS and non-ABS that are subject to a guarantee by a non-controlled person. Therefore, instead of creating a disparity in treatment between ABS and non-ABS by adopting the proposed definition of a guarantee issued by a non-controlled person, we are retaining the current definition of a guarantee issued by a non-controlled person, and we are proposing in our Release issued today regarding removing references to credit ratings in rule 2a-7 that the 5% issuer diversification limit be imposed on all securities with a guarantee by a non-controlled person.[1613]

[1611] *See* proposed (Fees and Gates) rule 2a-7(a)(17). Under the proposed rule, ABS that are subject to a guarantee by a non-controlled person that meets the definition in current rule 2a-7(a)(18)(i) would continue to have no issuer diversification limit.

[1612] Memorandum from the Division of Investment Management regarding a September 10, 2013 meeting with representatives of the Structured Finance Industry Group.

[1613] *See* Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule, Investment Company Act Release No. _____ (July 23, 2014).

e. Additional economic analysis

As discussed in the Proposing Release, these amendments are intended to more efficiently achieve the diversification of risk contemplated by the rule's current 5% issuer diversification limit. The treatment of affiliates for purposes of rule 2a-7's 5% issuer diversification limit, and our diversification amendments collectively, are designed to diversify the risks to which money market funds may be exposed and thereby reduce the impact of any single issuer's (or guarantor's or demand feature provider's) financial distress on a fund. Except to the extent that money market funds choose to reinvest some or all of their excess exposure in securities of higher risk, requiring money market funds to more broadly diversify against credit risk should reduce the volatility of fund returns (and hence NAVs) and limit the impact of an issuer's distress on fund liquidity, which should mitigate the risk of heavy shareholder redemptions from money market funds in times of financial distress and may promote capital formation by making money market funds a more stable source of financing for issuers of short-term credit instruments. Reducing money market funds' volatility and making their liquidity levels more resilient also could cause money market funds to attract further investments, increasing their role as a source of capital in the short-term financing markets for issuers. We are not able to quantify these benefits (although we do provide quantitative information concerning certain impacts), primarily because we continue to believe it is impractical, if not impossible, to identify with sufficient precision the marginal decrease in risk and increase in stability we expect these diversification amendments to provide. We received no comments providing quantification of benefits.

More fundamentally, as discussed in the Proposing Release, these amendments are designed to more effectively achieve the diversification of risk contemplated by the rule's current 5% issuer diversification limit. As discussed in the Proposing Release, we explained that "[d]iversification limits investment risk to a fund by spreading the risk of loss among a number of securities."[1614] Requiring funds to purchase "a number of securities" rather than a smaller number of concentrated investments will only "spread . . . the risk of loss" if the performance of those securities is not highly correlated. That is, a fund's investments in Issuers A, B and C are no less risky (or only marginally so) than a single investment in Issuer A if Issuers A, B, and C are likely to experience declines in value simultaneously and to approximately the same extent. This may indeed be likely if Issuers A, B and C are affiliated with each other. In addition, if Issuers A, B and C are affiliated with each other, they likely would share financial resources in the event of a crisis, which would make it more likely that they would experience declines in value simultaneously and to approximately the same extent. Prime money market funds' concentrated exposures to financial institutions increase these concerns because prime money market funds' portfolios already appear correlated to some extent.[1615]

As discussed in the Proposing Release, we recognize, however, that the amendments could impose costs on money market funds and could affect competition, efficiency, and capital formation. We expect that the requirement to aggregate affiliates for purposes of the 5% issuer diversification limit will increase the diversification of at least some money market funds.[1616] A

1614 *See* Proposing Release, *supra* note 25, at section III.J.1.

1615 *See* Proposing Release, *supra* note 25, nn.66-67 and accompanying text.

1616 *See* The Exposure Money Market Funds Have to the Parents of Issuers ("DERA Diversification Memo") (July 10, 2013), *available at* http://www.sec.gov/comments/s7-03-13/s70313-20.pdf. The Division of Risk, Strategy, and Financial Innovation ("RSFI") is now known as the Division of Economic and Risk Analysis ("DERA"), and accordingly we are no longer referring to this study as the "RSFI Diversification Memo" as we did in the Proposing Release, but instead as the "DERA Diversification Memo." The DERA Diversification Memo shows, among other things, that some money market funds invested more than 5% of their assets in the issuances of specific corporate groups, or "parents" (as defined in the DERA money market fund that had invested more than 5% of its assets in a parent or corporate group would, when those investments matured, have to reinvest some of the proceeds in a different parent or corporate group (or in unrelated issuers).[1617] We requested comment on how the amendment would affect competition, efficiency and capital formation, and the ways in which money market funds may invest in response to the amendment. One commenter stated that the requirement to treat affiliates as a single issuer for purposes of the 5% issuer diversification limit could impede a money market fund's ability to purchase high quality securities, and that, as a result, money market funds could be forced to purchase securities of issuers with credit ratings lower than those of the affiliated issuers.[1618] As noted above and discussed further below, we believe that any effect caused by a money market fund investing in securities with higher credit risk will be minimal due to the substantial risk-limiting provisions of rule 2a-7.[1619]

As discussed above, we acknowledge that the application of our diversification amendments on the treatment of ten percent obligors may cause certain sponsors to conduct additional due diligence and also may mean that some conduits would have to restructure their programs, particularly if information regarding the identity of obligors is unavailable, which could result in reduced funding capacity from money market funds. To the extent ABCP

Diversification Memo) between November 2010 and November 2012. For example, our staff's analysis shows that 30 money market funds, on average, invest at least 5% of their portfolios in the issuances of the largest parent. Our staff's analysis also shows that the largest fund-level exposure of at least 7% to the issuances of one parent is 14 while the largest average fund-level exposure of at least 10% of the issuances of one parent is 3.

1617 Money market funds will not be required to sell any of their portfolio securities as a result of any of our diversification amendments because rule 2a-7's diversification limits are measured at acquisition.

1618 Schwab Comment Letter. *See also* Dechert Comment Letter (arguing that our diversification amendments, in combination, may have the effect of reducing a money market fund's ability to invest in high quality securities).

1619 *See supra* notes 10 and 11 and accompanying text.

conduits may decide to restructure their programs, we expect that the ABCP conduits might incur costs associated with the restructuring, although we are unable to quantify any such costs as we do not know to what extent ABCP conduits will decide to restructure, and we also did not receive any comments regarding costs that ABCP conduits may incur.

We acknowledge that, as a result of our amendments, it is possible that some money market funds may purchase securities of issuers with lower credit quality, although we note that money market funds will continue to be required to meet the minimum credit risk standards set forth in rule 2a-7.[1620] It also seems reasonable to expect that a divestment by one money market fund (because its exposure to a particular group of affiliates is too great) might become a purchasing opportunity for another money market fund whose holdings in that affiliated group does not constrain it. If the credit qualities of the investments were similar, there should be no net effect on fund risk and yield, although we discuss below how fund risk and yield may be affected if money market funds choose to invest in securities of higher or lower credit risk than they do currently. In the Proposing Release we discussed ways in which a money market fund may reallocate its investments under our amendments to the diversification provisions of rule 2a-7 as well as possible ways in which the amendment might affect capital formation. We discuss above that requiring money market funds to more broadly diversify against credit risk may promote capital formation by making money market funds a more stable source of financing for issuers of short-term investments. However, the rule amendment could also reduce capital formation if money market funds choose to reinvest some or all of their excess exposure in securities of higher risk. In these instances, a money market fund's portfolio risk would increase,

[1620] *See* rule 2a-7(d)(2) (portfolio quality).

its NAV and fund liquidity may become more volatile and yields would rise. Money market funds in this scenario could become less stable than they are today, investor demand for the funds could fall (to the extent increased volatility in money market funds is not outweighed by any increase in fund yield), and capital formation could be reduced. Alternatively, money market funds might choose to reinvest excess exposure in securities of lower risk. In these instances, portfolio risk (e.g., credit risk, counterparty risk) would decrease, fund NAVs and liquidity would likely become less volatile and yields would fall. In this scenario, money market funds would become more stable than they are today, investor demand for the funds could rise (to the extent increased stability in money market funds is not outweighed by any decrease in fund yield), and capital formation might be enhanced.

As stated in the Proposing Release, we cannot predict how money market funds will invest in response to our amendments and we thus do not have a basis for determining money market funds' likely reinvestment strategies. We also did not receive comment on this issue. We note that money market funds' current exposures in excess of what our amendments will permit may reflect the overall risk preferences of their managers. To the extent that these amendments reduce the concentration of issuer risk, fund managers that have particular risk tolerances or preferences may shift their funds' remaining portfolio assets, within rule 2a-7's minimal credit risk requirements,[1621] to higher risk assets. If so, portfolio risk, although more diversified, would increase (or remain constant), and we would expect portfolio yields to rise (or to remain constant). If yields were to rise, money market funds might be able to compete more favorably with other short-term investment products (to the extent the increased yield is not

1621 *See id.*

outweighed by any increased volatility).

We continue to be unable to predict or quantify the precise effects this amendment will have on competition, efficiency, or capital formation and did not receive comments addressing the precise effects. The effects depend on how money market funds, their investors, and companies that issue securities to money market funds will adjust on a long-term basis to our amendment. The ways in which these groups could adjust, and the associated effects, are too complex and interrelated to allow us to predict them with specificity or to quantify them. For example, if a money market fund must reallocate its investments under our amendment, whether that will affect capital formation depends on whether there are available alternative investments the money market fund could choose and the nature of any alternatives. Assuming there are alternative investments, the effects on capital formation will depend on the amount of yield the issuers of the alternative investments will be required to pay as compared to the amount they would have paid absent our amendments. For example, our amendment could cause money market funds to seek alternative investments and this increased demand could allow their issuers to pay a lower yield than they would absent this increase in demand. This would decrease issuers' financing costs, enhancing capital formation. But it also could decrease the yield the money market fund paid to its shareholders, potentially making money market funds less attractive and leading to reduced aggregate investments by the money market fund which, in turn, could increase financing costs for issuers of short-term debt.

The availability of alternative investments and the ease with which they could be identified could affect efficiency, in that money market funds might find their investment process less efficient if they were required to expend additional effort identifying alternative investments. These same factors could affect competition if more effort is required to identify alternative investments under our amendments and larger money market funds are better positioned to expend this additional effort or to do so at a lower marginal cost than smaller money market funds. These factors also could affect capital formation in other ways, in that money market funds could choose to invest in lower quality securities under our propôsal if they are not able to identify alternative investments with levels of risk equivalent to the funds' current investments.

As discussed in the Proposing Release, the amendments could require money market funds to update the systems they use to monitor their compliance with rule 2a-7's 5% issuer diversification limit in order to aggregate exposures to affiliates. Although we understand, as discussed above, that most money market funds today consider their exposures to entities that are affiliated with each other for risk management purposes, any systems money market funds currently have in place for this purpose may not be suitable for monitoring compliance with a diversification requirement, as opposed to a risk management evaluation (which may entail less regular or episodic monitoring).

We requested comment as to whether funds expect that they would incur operational costs in addition to, or that differ from the costs estimated in the Proposing Release. We did not receive comments regarding specific costs, although one commenter stated that it did not believe that the amendments would have a significant impact on the operations of most money market funds.[1622] Another commenter stated that additional time and data costs may be required to determine issuer affiliations, but also stated that it did not see a significant increase in costs related to complying with our amended issuer diversification requirements.[1623]

1622 ICI Comment Letter.

1623 State Street Comment Letter.

Based on the activities typically involved in making systems modifications, and recognizing that money market funds' existing systems currently have varying degrees of functionality, we estimated in the Proposing Release, and continue to estimate, that the one-time systems modifications costs (including modifications to related procedures and controls) for a money market fund associated with these amendments would range from approximately $600,000 to $1,200,000.[1624] As we stated in the Proposing Release, we do not expect that money market funds will incur material ongoing costs to maintain and modify their systems as a result of this amendment because we expect modifications required by this amendment will be incremental changes to existing systems that already perform similar functions (track exposures for purposes of monitoring compliance with rule 2a-7's 5% issuer diversification limit).

Although we have estimated the costs that a single money market fund could incur as a result of this amendment, we expect that these costs will be shared among various money market funds in a complex. As discussed in the Proposing Release, we do not expect that money market funds will be required to spend additional time determining affiliations under our amendments, or if an additional time commitment is required, we expect that it would be minimal. We estimated in the Proposing Release that the costs of this minimal additional time commitment to a money market fund, if it were to occur, will range from approximately $5,000 to $105,000 annually.[1625] We did not receive comments on these particular estimates, although we have

1624 Staff estimates that these costs will be attributable to the following activities: (i) planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls; and (iii) preparing training materials and administering training sessions for staff in affected areas. *See also supra* section III.A.5.a.

1625 In arriving at this estimate in the Proposing Release, we expected that any required additional work generally would be conducted each time a money market fund determined whether to add a new issuer to the approved list of issuers in which the fund may invest. The frequency with which a money market fund makes these determinations would depend on its size and investment strategy. To be conservative, and updated our estimates based on more recent data, and now estimate that the costs of this minimal additional time commitment to a money market fund, if it were to occur, will range from approximately \$6,700 to \$109,500 annually.[1626]

based on Form N-MFP data concerning the number of securities held in money market funds' portfolios, we estimated that a money market fund could be required to make such a determination between 33 and 339 times each year. This was based on our staff's review of data filed on Form N-MFP as of February 28, 2013, which showed that the 10 smallest money market funds by assets had an average of 33 investments and the 10 largest money market funds by assets had an average of 339 investments. The number of a money market fund's investments should be a rough proxy for the number of times each year that a money market fund could add an issuer to its approved list, although this will overstate the frequency of these determinations (*e.g.*, a fund may have a number of separate investments in a single issuer). We estimated that the additional time commitment imposed by our amendments, if any, would be an additional 1-2 hours of an analyst's time each time the fund determined whether to add an issuer to its approved list. The estimated range of costs, therefore, was calculated as follows: (33 evaluations x 1 hour of a junior business analyst's time at \$155 per hour = \$5,115) to (339 evaluations x 2 hours of a junior business analyst's time at \$155 per hour = \$105,090). Finally, we recognize that some money market funds do not use an approved list, but instead evaluate each investment separately. We believe that the number of a money market fund's investments also should be a rough proxy for the number of times such a money market fund would evaluate each investment. Such funds may be on the higher end of the range, however, because the extent to which a fund's average number of investments reflects the number of times such a fund purchases securities would depend on the rate of the fund's portfolio turnover. Whether any additional analysis would be required as a result of our amendments for such a fund also would depend on whether the fund invested proceeds from maturing securities in issuers for which a new credit risk analysis was required or in issuers of securities owned by the fund for which the analysis may already have been done.

1626 In arriving at this estimate, we expect that any required additional work generally will be conducted each time a money market fund determined whether to add a new issuer to the approved list of issuers in which the fund may invest. The frequency with which a money market fund will make these determinations would depend on its size and investment strategy. To be conservative, and based on Form N-MFP data concerning the number of securities held in money market funds' portfolios, we estimate that a money market fund could be required to make such a determination between 42 and 342 times each year. This is based on our staff's review of data filed on Form N-MFP as of February 28, 2014, which showed that the 10 smallest money market funds (not including government or Treasury funds) by assets had an average of 42 investments and the 10 largest money market funds (not including government or Treasury funds) by assets had an average of 342 investments. The number of a money market fund's investments should be a rough proxy for the number of times each year that a money market fund could add an issuer to its approved list, although this will overstate the frequency of these determinations (*e.g.*, a fund may have a number of separate investments in a single issuer). We estimate that the additional time commitment imposed by our amendments, if any, will be an additional 1-2 hours of an analyst's time each time the fund determined whether to add an issuer to its approved list. The estimated range of costs, therefore, is calculated as follows: (42 evaluations x 1 hour of a junior business analyst's time at \$160 per hour = \$6,720) to (342 evaluations x 2 hours of a junior business analyst's time at \$160 per hour = \$109,440). Finally, we recognize that some money market funds do not use an approved list, but instead evaluate each investment separately. We believe that the number of a money market fund's investments also should be a rough proxy for the number of times such a money market fund would evaluate each investment. Such funds may be on the higher end of the range, however, because the extent to which a fund's average number of investments reflects the number of times such a fund purchases securities would depend on the rate of the fund's portfolio turnover. Whether any additional analysis would be required as a result of our

2. *ABS – Sponsors Treated as Guarantors*

We are amending rule 2a-7, as proposed, to require that money market funds treat the sponsors of ABS as guarantors subject to rule 2a-7's 10% diversification limit applicable to guarantees and demand features, unless the money market fund's board of directors (or its delegate) determines that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity.[1627] As discussed in the Proposing Release, money market funds' reliance on and exposure to sponsors of ABCP, a type of ABS, specifically during 2007, suggests that current rule 2a-7 potentially permits money market funds to become overexposed to ABCP sponsors.[1628] Our amendments today therefore provide that, subject to an exception, money market funds investing in ABS rely on the sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to the ABS, and require diversification against such reliance and exposure to ABS sponsors.[1629]

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amendments for such a fund also would depend on whether the fund invested proceeds from maturing securities in issuers for which a new credit risk analysis was required or in issuers of securities owned by the fund for which the analysis may already have been done.

1627 As a result, subject to an exception, a money market fund cannot invest in ABS, if immediately after the investment it would have invested more than 10% of its total assets in securities issued by or subject to demand features or guarantees from the ABS sponsor. *See* rule 2a-7(a)(18)(ii) and rule 2a-7(d)(3)(iii). Current rule 2a-7 applies a 10% diversification limitation on demand features and guarantees to 75% of money market funds' total assets. As discussed in *infra* section III.I.3, we are amending rule 2a-7 to apply the 10% diversification limitation to 85% of a tax-exempt money market fund's assets and to 100% of a fund's assets for money market funds other than tax-exempt funds.

1628 *See* Proposing Release, *supra* note 25, at section III.J.2.

1629 Under the amended rule, the sponsor of an ABS will be deemed to guarantee the entire principal amount of those ABS, except that the sponsor will not be deemed to have provided such a guarantee for purposes of the following paragraphs of rule 2a-7: (a)(12)(iii) (definition of eligible security); (d)(2)(iii) (credit substitution); (d)(3)(iv)(A) (fractional guarantees); and (e) (guarantees not relied on). We also are adopting a number of conforming amendments to other provisions of rule 2a-7 to implement the treatment of ABS sponsors as guarantors. *See* rule 2a-7(f)(4)(iii) (defining defaults for purposes of rule 2a-7(f)(2) and (3) as applied to guarantees issued by ABS sponsors); rule 2a-7(g)(7) (requiring periodic re-evaluations of any finding that the fund is not relying on the sponsor's financial strength or ability or willingness to provide

A number of commenters generally supported the requirement to treat sponsors of ABS as guarantors.[1630] For example, one commenter noted that ABS sponsors have provided explicit as well as implicit credit and liquidity support for the vehicles they have sponsored and that it is therefore appropriate that such support be presumed for purposes of applying rule 2a-7 diversification limitations.[1631] Several commenters however, generally opposed the proposed requirement.[1632] Some of these commenters argued that the requirement to treat sponsors of ABS as guarantors is not consistent with the current practice of money market funds.[1633] For example, one commenter stated that while money market funds cannot usually review information about the particular assets underlying ABS,[1634] money market funds nevertheless base their credit decisions on a multitude of factors other than the sponsor's financial strength.[1635] Some commenters also argued that money market funds look to the legal requirement for a sponsor to provide a guarantee rather than relying on an implicit guarantee by the sponsor,[1636] and that

support in determining the quality or liquidity of ABS); and rule 2a-7(h)(6) (recordkeeping requirements for the periodic re-evaluations).

1630 *See, e.g.,* Goldman Sachs Comment Letter; Schwab Comment Letter; U.S. Bancorp Comment Letter; Vanguard Comment Letter; BlackRock II Comment Letter; Wells Fargo Comment Letter.

1631 Goldman Sachs Comment Letter.

1632 *See, e.g.,* SSGA Comment Letter; Federated II Comment Letter. *See also* ICI Comment Letter (arguing that the amendment could result in a reduction of the supply of securities to money market funds without any increase in investor protection).

1633 *See, e.g.,* Federated VIII Comment Letter; SSGA Comment Letter; ICI Comment Letter.

1634 *See* Proposing Release, *supra* note 25, nn.870-872 and accompanying text (discussing that an asset-liability mismatch in ABCP conduits causes ABCP investors to analyze the structure of the ABCP conduits more so than underlying asset level information).

1635 Federated II Comment Letter (describing information it reviews, including pool level information about the underlying assets). *See also* Federated VIII Comment Letter (discussing its evaluation of ABCP before investing, noting that only a portion of their analysis is based on the sponsor, and that significant emphasis is placed on the qualifying assets); SSGA Comment Letter (stating that it believes credit analysis with regard to ABS should not solely rely upon sponsor support).

1636 *See, e.g.,* Federated II Comment Letter; ICI Comment Letter (arguing that because the proposed requirement would treat a sponsor as a guarantor of the entire amount of the ABS even when the sponsor partial or incidental reliance on the financial strength of an ABS sponsor should not require treatment of the sponsor as a 100% guarantor of the ABS.[1637] Another commenter argued that the requirement to treat the sponsor of an SPE issuing ABS as a guarantor of ABS would require money market funds to expand diversification of ABS sponsors at the same time many of these sponsors are exiting the market.[1638] While we recognize that in many cases a money market fund is not basing its investment decision solely on the financial strength of the sponsor or on an implicit guarantee by the sponsor, we understand, as discussed in the Proposing Release, that money market funds often make investment decisions based, at least in part, on the presumption that the sponsor will take steps to prevent the ABS from defaulting.[1639] However, money market funds are generally not required to diversify against ABS sponsors because the support that ABS sponsors provide, implicitly or explicitly, which money market funds often rely on, typically does not meet the current rule's definition of "guarantee" or "demand feature."[1640]

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has no legal obligation to support its ABS, the amendment seems to endorse the practice of relying on an "implicit" guarantee when assessing the credit risk of ABS). *See also* Federated VIII (arguing that the amendment would encourage investors that are assessing the credit risk of ABS to rely on an unproven assumption that a sponsor will voluntarily assume losses on its financial products, and that because such "implicit guarantees" are not reliable, endorsing this practice would only increase risks to money market funds that invest in ABS.)

1637 *See, e.g.,* ICI Comment Letter; Federated VIII Comment Letter.

1638 Invesco Comment Letter.

1639 Comment Letter of the American Securitization Forum (Aug. 2, 2010) (available in File No. S7–08–10) ("ASF August 2010 Comment Letter"). ("[T]he liquidity and credit support for the vast majority of ABCP conduits are provided by their financial institution sponsors."). *But see* SFIG Comment Letter (describing that a subset of ABCP conduits are administered by entities that are not financial institutions and that credit or liquidity support to the ABCP conduit is provided by financial institutions that are not affiliated with the administrator); ICI Comment Letter (suggesting that there is no reason to require diversification against sponsors as opposed to other service providers such as servicers and liquidity providers). Although persons other than the sponsor, such as servicers and liquidity providers, could support ABS, we understand that, to the extent ABS have explicit support, it typically is provided by the sponsor. We also understand that investors in ABS without explicit support may view the sponsor as providing implicit support. *See, e.g.,* Goldman Sachs Comment Letter.

1640 *See* Proposing Release, *supra* note 25, n.868 and accompanying text.

We acknowledge that if sponsor supply were to become limited, it may be more difficult for money market funds to obtain ABS. However, after further consideration, we continue to believe it is appropriate to amend rule 2a-7 to require diversification against such support to limit a money market fund's concentration in a single sponsor because a fund could seek to rely on liquidity or capital support from that sponsor, if necessary. When a money market fund is determining the ABS's quality or liquidity based, at least in part, on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support, limiting a money market fund's concentration in that sponsor mitigates the risk that a money market fund would face in the case where such ABS sponsor would be unable to support the value of the fund's investments in times of severe market stress because it reduces the amount of a money market fund's investments that would be impacted by the inability of the sponsor to support the value of those investments.

As discussed further below, we recognize that in certain cases an ABS sponsor should not be deemed to guarantee the ABS. An ABS sponsor therefore will not be deemed to guarantee the ABS if the money market fund's board of directors (or its delegate) determines that the fund is not relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to determine the ABS's quality or liquidity. We also discuss below that an ABS sponsor will not be deemed to guarantee the full amount of ABS in cases of fractional guarantees.

Commenters noted that under current rule 2a-7, if a company guarantees or provides a demand feature of a portion of the qualifying assets, only that portion of the ABS is counted towards the diversification limit.[1641] These commenters expressed concern that amended rule 2a-7 would change this result by treating a company that sponsors ABS as a guarantor of the entire amount held by a fund, even if the company's guarantee or demand feature is limited to a smaller amount.[1642] As proposed, in cases where a security is subject to a fractional demand feature or guarantee by the sponsor, as defined in rule 2a-7, a money market fund may count the fractional demand feature or guarantee in place of deeming the sponsor as a guarantor of the entire principal amount of the ABS.[1643] However, in cases where a money market fund is partially or incidentally relying on the financial strength of the ABS sponsor, but such partial or incidental reliance does not fall under the definition of a fractional guarantee, the money market fund will be required to treat the sponsor as a guarantor of the entire principal amount of the ABS. In this case, even though a sponsor may not be providing a full guarantee, the fund would not be able to readily determine the actual portion of assets for which the guarantor is providing structural support. Therefore, except in cases of fractional guarantees as discussed above, we continue to believe that, unless the board of directors determines that the fund is not relying on the financial strength of the sponsor, it is appropriate to require diversification against such sponsor with respect to all the qualifying assets in order to mitigate the risk that an ABS sponsor would be unable to support the value of a money market fund's investments in times of severe market stress.

1641 *See, e.g.*, ICI Comment Letter; Memorandum from the Division of Investment Management regarding a September 10, 2013 meeting with representatives of the Structured Finance Industry Group.

1642 *Id.*

1643 *See* rule 2a-7(d)(3)(iv)(A) (calculation of fractional demand features or guarantees) and rule 2a-7(a)(18)(ii) (providing an exception from the requirement to deem a sponsor of an SPE as providing a guarantee with respect to the entire principal amount of ABS in the case of fractional guarantees).

One commenter suggested that explicit support would not always be dispositive in determining the sponsor's identity and that treating certain entities as sponsors would not reflect actual economic risks to the fund.[1644] This commenter also recommended that we define the term sponsor in our final amendments, noting that otherwise it may be difficult for certain money market funds to determine the entity that is providing the deemed guarantee.[1645] Although providing a specific definition of ABS sponsor may exclude certain entities that should otherwise be treated as a sponsor, and may not allow for future flexibility with regards to new types of ABS structures, we understand that determining the ABS sponsor in certain cases may present difficulties. We recognize that in some cases where the administrator of an ABCP conduit, which may otherwise be commonly thought of as the sponsor, is not providing liquidity or credit support, the administrator would not appropriately be defined as a sponsor for purposes of our amended diversification requirements. In this case, requiring diversification against entities that do not, or could not, provide liquidity, credit or other support to the ABCP conduit would not reflect the actual risks of a fund's exposure to such an entity. For ABCP, we believe that the sponsor will typically be the financial institution that provides explicit liquidity and/or credit support and also provides administrative services to the ABCP conduit.[1646] The amended diversification requirements we are adopting today aim to diversify against the risks of

1644 SFIG Comment Letter (recommending that we define a provider of credit and liquidity support to an ABCP conduit that equals or exceeds fifty percent of the outstanding face amount of the ABCP of such conduit as the sponsor).

1645 *Id.*

1646 For TOB programs in which the liquidity provider for the TOB program or its affiliate holds the residual interest in the TOB trust, we believe the entity that provides both the liquidity support and holds the residual interest typically will be the sponsor. For TOB programs in which the liquidity provider or its affiliate does not also own the residual interest in the TOB trust, we believe the financial institution that sets up the TOB program, markets and remarkets the TOBs, transfers the municipal security into the TOB trust and/or provides liquidity typically will be the sponsor.

concentration of exposure to entities that a fund may be relying on, whether explicitly or implicitly, in determining the ABS's quality or liquidity. Therefore, if a money market fund is relying on an entity's financial strength or its ability or willingness to provide liquidity, credit, or other types of support to determine the ABS's quality or liquidity, such entity would appropriately be defined as a sponsor for purposes of our amended diversification requirements.

As proposed, our amended rule requires that, unless the board (or its delegate) determines otherwise, all ABS sponsors are deemed to guarantee their ABS. We are applying this requirement to all ABS sponsors because we are concerned that applying the requirement only to sponsors of certain types of ABS could become obsolete as new forms of ABS are introduced. Because we recognize that it may not be appropriate to require money market funds to treat ABS sponsors as guarantors in all cases, under amended rule 2a-7, an ABS sponsor would not be deemed to guarantee the ABS if the money market fund's board of directors (or its delegate) determines that the fund is not relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to determine the ABS's quality or liquidity.[1647] In determining whether a money market fund is relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support, the money market fund board of directors may want to consider, among other things, whether the fund considers the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support as a factor when determining the ABS's quality or liquidity.

While one commenter specifically supported the exception to the ABS sponsor

[1647] Rule 2a-7(a)(18)(ii). This determination must be documented and retained by the money market fund. *See* rule 2a-7(g)(7) and rule 2a-7(h)(6).

designation through money market fund board of directors (or delegate) action;[1648] other commenters expressed concern that overseeing determinations that a money market fund is not relying on ABS sponsors would impose further burdens on money market fund directors.[1649] However, a board can, and likely will, delegate this responsibility.[1650] While we recognize that a board will, at a minimum, need to provide oversight and establish procedures[1651] if it delegates its responsibility, we believe that any incremental burden to make a determination (by the board or its delegate) regarding reliance on an ABS sponsor should be minimal, as the money market fund would already have analyzed the security's credit quality and liquidity when assessing whether the security posed minimal credit risks and whether the fund could purchase the security consistent with rule 2a-7's limits on investments in "illiquid securities."[1652] One commenter supported a board exception that applied when a money market fund board (or its delegate) determines that a sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support did not play a *substantial* role in the money market fund's assessment of the ABS's quality or liquidity.[1653] On balance however, we believe that even when a money market fund board of directors (or its delegate) determines that a sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support plays a less than *substantial* role in the money market fund's assessment of the ABS's quality or liquidity, it is beneficial to

1648 Goldman Sachs Comment Letter.

1649 Federated VIII Comment Letter; ICI Comment Letter; Fidelity Comment Letter.

1650 *See* rule 2a-7(j) (providing a money market fund's board of directors the ability to delegate to the fund's adviser or officers the responsibility to make certain determinations required to be made by the board of directors under rule 2a-7).

1651 *See* rule 2a-7(j)(1) and (2).

1652 Rule 2a-7(a)(12) (definition of "eligible security") and rule 2a-7(d)(4) (portfolio liquidity).

1653 Invesco Comment Letter.

require diversification against such sponsor because it limits a money market fund's concentration in a single sponsor on which the fund could still seek to rely. In addition, requiring diversification against such sponsor also mitigates the possible effect of an ABS sponsor being unable to support the value of the ABS because a money market fund will be required to diversify against its investments in ABS with such sponsor. We are therefore adopting the board exception as proposed.

Several commenters argued that a board should not have to make a finding in certain situations where the ABS is fully supported by a guarantee or demand feature provided by a third party.[1654] One of these commenters argued that if an issuance of ABS has a contractual guarantee of support by a third party, we should require money market funds to count the third-party guarantor, rather than the sponsor, for purposes of the diversification limit.[1655] This commenter noted that for ABS that carry contractual guarantees of support by third parties, a fund manager often looks to financial strength and creditworthiness of the third-party guarantor to evaluate the creditworthiness or liquidity of the ABS.[1656] We recognize that in certain cases, ABS may be fully supported by a guarantee or demand feature provided by a third party where the board (or its delegate) would determine that the money market fund is not relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to determine the ABS' quality or liquidity. However, some money market funds may view the third-party guarantee as a "layered guarantee" on top of the sponsor's guarantee, which today are both subject to a 10% diversification limit under rule 2a-7. We believe it is appropriate to allow

1654 *See, e.g.*, ICI Comment Letter; Fidelity Comment Letter; Wells Fargo Comment Letter.

1655 Wells Fargo Comment Letter.

1656 *Id.*

for instances of layered guarantees when a third-party guarantor is present, and therefore believe that in cases where a money market fund is relying only on the third-party guarantor the board (or its delegate) can determine that it is not relying on the sponsor, and in cases where a money market fund views the third-party guarantor as providing a layered guarantee, the amended rule will provide that the money market fund treat the guarantee by the sponsor and the guarantee by the third-party guarantor as layered guarantees.

Commenters also argued that the board should not have to make the required findings for certain types of ABS, such as TOBs. Commenters argued that diversification from TOB sponsors is unnecessary because TOBs have dedicated liquidity providers and frequently have credit enhancement, and the TOB sponsor may not necessarily be the provider of either.[1657] Commenters also stated that tax-exempt money market funds in particular would suffer if TOBs were not excluded because the amended diversification requirements would further restrict a money market fund's ability to hold TOBs.[1658] One commenter recommended excluding sponsors of all types of ABS (other than ABCP) from the proposed ABS sponsor rule, noting that sponsors of non-ABCP ABS do not typically provide explicit credit or liquidity support.[1659] We recognize that in some cases diversification from non-ABCP ABS sponsors, including TOB sponsors may be unnecessary if the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity.

1657 *See, e.g.,* Vanguard Comment Letter. *See also* SIFMA Comment Letter.

1658 *See, e.g.,* Fidelity Comment Letter; SIFMA Comment Letter (noting that TOBs already have a limited number of sponsors).

1659 SFIG Comment Letter.

Although commenters suggested providing an exclusion from the amended rule, we believe that non-ABCP ABS, including TOBs, are more appropriately addressed through the board exception to the diversification requirement. Because at least in some instances a fund may be looking to the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity, we have decided to retain the presumption for ABS generally. In addition, we believe that it would be inefficient to attempt to anticipate every type of ABS sponsor that should be excluded now or in the future, and designating particular exclusions in the amended rule may not provide for innovation of new types of ABS over time. The rebuttable presumption we are adopting today however, does allow for flexibility in instances where the fund is not looking to the sponsor, irrespective of the actual type of ABS, where the board of directors determines that the fund is not relying on the sponsor to make determinations about quality or liquidity.

3. *The Twenty-Five Percent Basket*

We proposed amending rule 2a-7 to eliminate the "twenty-five percent basket," under which as much as 25% of the value of securities held in a money market fund's portfolio may be subject to guarantees or demand features from a single institution.[1660] After further consideration,

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1660 Current rule 2a-7 applies a 10% diversification limit on guarantees and demand features only to 75% of a money market fund's total assets. *See* current rule 2a-7(c)(4)(iii)(A). A money market fund, however, may only use the twenty-five percent basket to invest in demand features or guarantees that are first tier securities issued by non-controlled persons. *See* rules 2a-7(c)(4)(iii)(B) and (C). Although we proposed to delete current rule 2a-7(a)(10) (definition of demand feature issued by a non-controlled person) because the term is used only in connection with the twenty-five percent basket, we are retaining the definition because our amendments provide a fifteen percent basket for tax-exempt money market funds. *See* rule 2a-7(a)(10). We also are adopting certain amendments to clarify that a fund must comply with this 10% diversification limit immediately after it acquires a security directly issued by, or subject to guarantees or demand features provided by, the institution that issued the security or provided the demand feature or guarantee. *See* rules 2a-7(d)(3)(i) and (iii). We believe this amendment reflects funds' current practices and is consistent with rule 2a-7's current requirements.

and in light of the comments received, our final amendments (i) remove the twenty-five percent basket for money market funds other than tax-exempt money market funds, and (ii) reduce to 15%, rather than eliminate, the twenty-five percent basket for tax-exempt money market funds, including single state money market funds.[1661]

As discussed in the Proposing Release, a number of recent events have highlighted the risks to money market funds caused by their substantial exposure to providers of demand features and guarantees.[1662] For example, during the financial crisis, many funds were heavily exposed to bond insurers and a few major financial institutions that served as liquidity providers. This concentration led to considerable stress in the municipal markets when some of these bond insurers and financial institutions came under pressure during the financial crisis. We continue to believe that tightening diversification requirements with respect to a money market fund's exposure to securities subject to guarantees or demand features from a single guarantor or demand feature provider will reduce this risk. However, we are concerned that removing the twenty-five percent basket entirely for tax-exempt money market funds would inhibit the ability

1661 We note that Investment Company Act rule 12d3-1 also refers to a twenty-five percent basket. *See* rule 12d3-1(d)(7)(v). That rule generally permits investment companies to purchase certain securities issued by companies engaged in securities-related activities notwithstanding section 12(d)(3)'s limitations on these kinds of transactions. Among other things, rule 12d3-1 provides that the acquisition of a demand feature or guarantee as defined in rule 2a-7 will not be deemed to be an acquisition of the securities of a securities-related business provided that "immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than 10 percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution." We requested comment as to whether we should revise rule 12d3-1 to apply this diversification requirement with respect to all of an investment company's total assets, rather than just 75% of assets, for consistency with the proposed elimination of the twenty-five percent basket in rule 2a-7. We received no comments regarding rule 12d3-1. At this time we are not amending rule 12d3-1 to reflect our amendments to rule 2a-7's diversification provisions because although rule 12d3-1 provides a twenty-five percent basket for purposes of section 12(d)(3) limitations, this twenty-five percent basket is not directly associated with the twenty-five percent basket in rule 2a-7.

1662 *See* Proposing Release, *supra* note 25, at section III.J.3.

of these funds to be fully invested in securities subject to guarantees or demand features or may force them to invest in securities that have weaker credit than the securities they might otherwise purchase, due to the more limited availability of guarantors and demand feature providers for tax-exempt money market funds as compared to non-tax-exempt money market funds.[1663] Accordingly, under our amendments, as much as 15% of the value of securities held in a tax-exempt money market fund's portfolio may be subject to guarantees or demand features from a single institution.[1664]

a. Use of Twenty-Five Percent Basket by Money Market Funds

i. *Non-tax-exempt money market funds*

To help us evaluate the possible effects of removing the twenty-five percent basket on non-tax-exempt money market funds, DERA staff analyzed the exposure that money market funds have to guarantors, as described in detail in the DERA Guarantor Diversification Memo.[1665] As demonstrated below, DERA staff found that the majority of money market funds do not use the twenty-five percent basket.

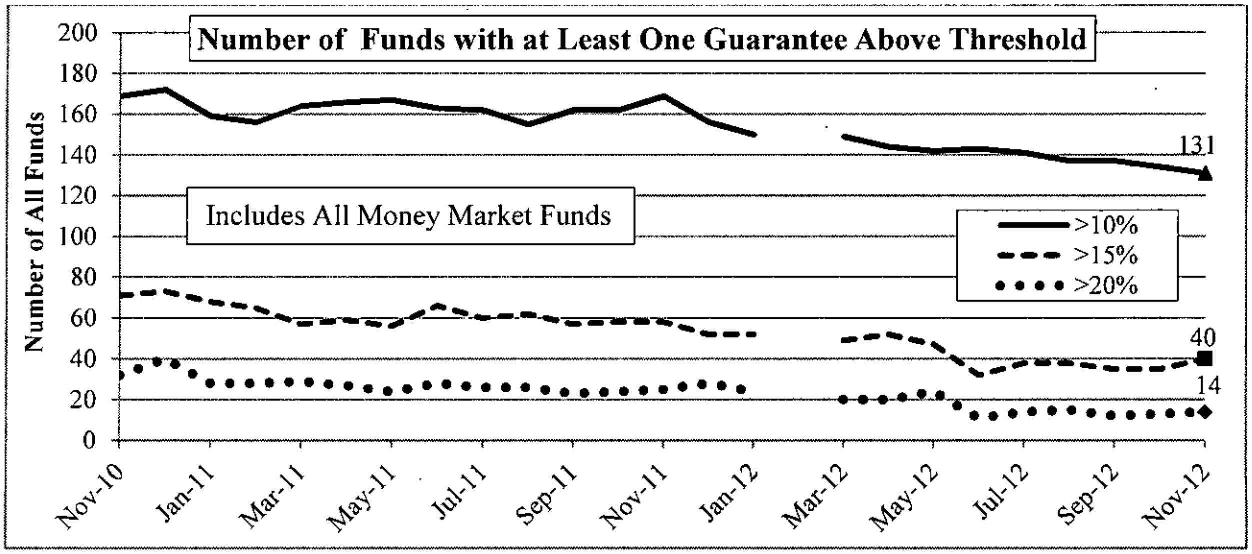
As presented in the figure below, DERA staff examined the number of money market funds for which guarantors compose more than 10%, 15% and 20% of their portfolios,

1663 As discussed in more detail below, this concern primarily applies to tax-exempt funds, the largest users of the basket, as they face a significantly more constrained supply of investable securities than other types of money market funds.

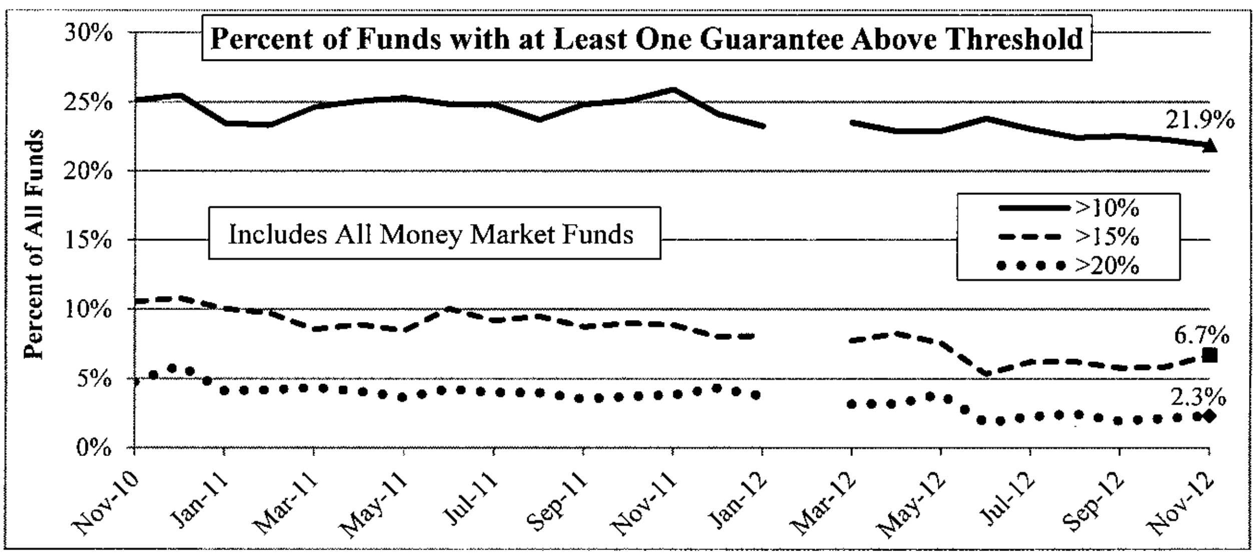
1664 *See* rule 2a-7(d)(3)(iii)(B) and rule 2a-7(a)(28). *See also supra* note 1583.

1665 *See* Municipal Money Market Funds Exposure to Parents of Guarantors ("DERA Guarantor Diversification Memo") (March 17, 2014), *available at* http://www.sec.gov/comments/s7-03-13/s70313-323.pdf. In the DERA Guarantor Diversification Memo, the term "guarantors" is used to refer both to the ultimate parent of issuers of guarantees and issuers of demand feature, and the term "guarantees" is used to refer both to guarantees and demand features.

respectively.[1666]



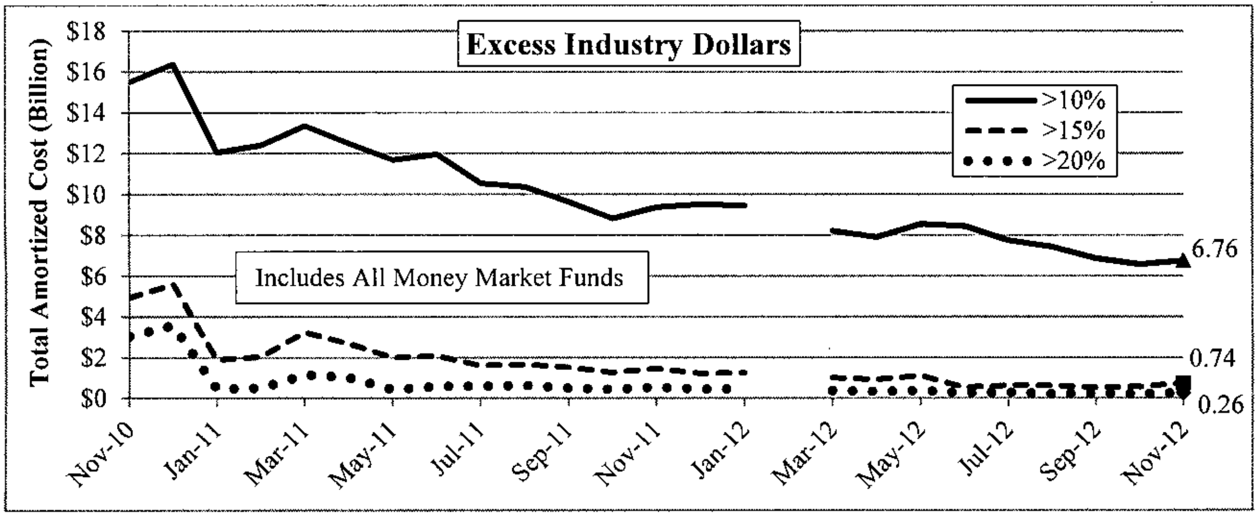
As shown in the figure below, DERA staff also examined the percent of all money market funds for which guarantors compose more than 10%, 15%, and 20% of their portfolios, respectively.[1667]



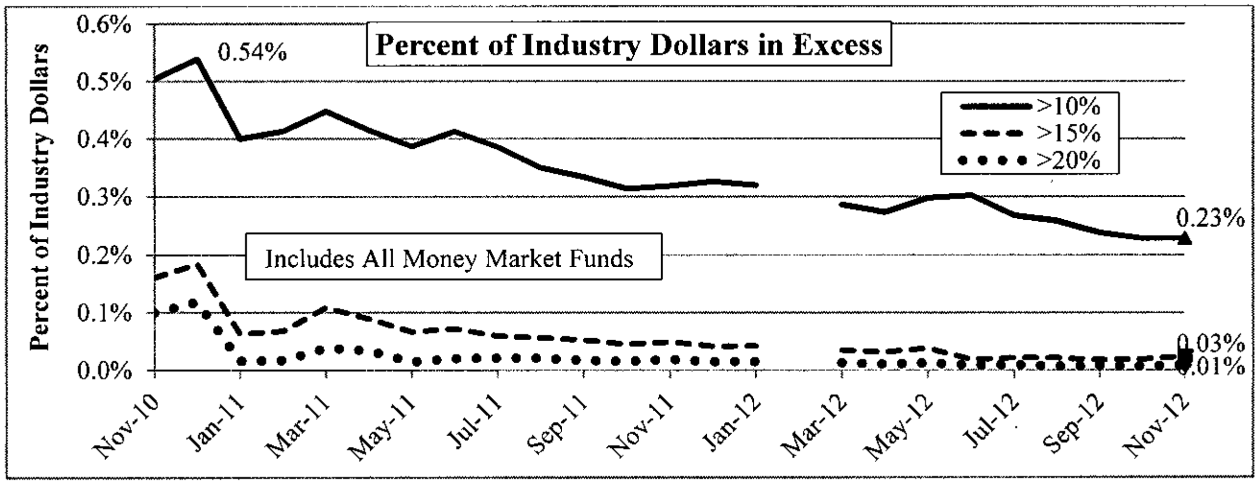
1666 *Id.* The DERA Guarantor Diversification Memo also provides information regarding tax-exempt money market funds, which we discuss below.

1667 *Id.*

In addition, as illustrated in the figure below, DERA staff examined the amount of excess exposure that money market funds have above the 10%, 15%, and 20% thresholds, respectively.[1668]



DERA staff also found, as illustrated below, that only a small percentage of the entire money market fund industry assets are exposed to guarantors in excess of the 10%, 15%, and 20% thresholds.[1669]



1668 *Id.*

1669 *Id.*

In addition to showing that the majority of money market funds do not use the basket, the data analyzed in the DERA Guarantor Diversification Memo also shows that money market funds that do use the twenty-five percent basket use the basket to a limited extent for purposes of gaining a high level of exposure to any one particular guarantor or demand feature provider.[1670] In fact, commenters noted that although a money market fund may use the full twenty-five percent basket to gain exposure to one guarantor or demand feature, money market funds will often use the twenty-five percent basket to gain a smaller amount of exposure to two guarantors or demand feature providers above the 10% diversification limit, for a total of up to twenty-five percent.[1671]

As noted by commenters, currently, a money market fund can use the twenty-five percent basket in two ways. First, a money market fund can apply the basket to one guarantor where the guarantor can account for as much as 25% of the portfolio's guarantees. The figures above show that \$260 million or 0.01% of the industry dollars are above the 20% threshold as of November 2012 and \$740 million or 0.03% of the industry dollars are above the 15% threshold as of November 2012, suggesting that few funds are using the basket this way. Second, a money market fund can apply the basket to two guarantors where each guarantor has between 10% and 15% of the portfolio guarantees and the sum equals 25% or less. The difference between the

1670 *Id.* The DERA Guarantor Diversification Memo shows that money market funds' exposure in excess of the 15% diversification threshold is relatively small, amounting to 0.03% of the assets in the entire money market fund industry as of November 2012.

1671 *See, e.g.,* Wells Fargo DERA Comment Letter; Comment Letter of Federated Investors, Inc. (Municipal Money Market Funds) (Apr. 23, 2014) ("Federated DERA III Comment Letter"); SIFMA DERA Comment Letter. For example, money market funds may use the twenty-five percent basket to obtain exposure for two demand feature providers or guarantors above the 10% diversification limit, in which case the exposure to any one demand feature provider or guarantor would have to be less than 15%, and the average exposure to any one demand feature provider or guarantor could not exceed 12.5%. *See* Federated DERA III Comment Letter.

15% and the 10% threshold amounts in the above illustrations represents the usage under this scenario. As of November 2012, $6.02 billion or 0.2% of the industry dollars are used this way, suggesting that most funds use the twenty-five percent basket divided up among two guarantors with exposures up to 15%.[1672] If we assume an even split of 12.5% between two guarantors, then instead of having to reduce exposure from 25% to 10% for one guarantor, most money market funds will be required to reduce exposure from 12.5% to 10% for two guarantors. Thus, because most money market funds are not today using the twenty-five percent basket to gain high levels of exposure to any one particular guarantor or demand feature provider, we believe that any negative effects for these money market funds that would be associated with reducing exposure to guarantors would generally be minimal.

One commenter suggested that the figures we provided in the Proposing Release (which were derived from monthly Form N-MFP filings) only captured the funds that used the twenty-five percent basket on one particular day, but that the basket is regularly relied upon during the course of the fund's operations.[1673] The DERA Guarantor Diversification Memo addresses the commenter's concern by reviewing the use of the twenty-five percent basket over a period of two years.[1674] After further review, our staff found that the data we provided in the Proposing Release is comparable with the use of the twenty-five percent basket when we analyze money market

1672 As discussed below, the DERA analysis further shows that the usage of the twenty-five percent basket is predominantly used by tax-exempt money market funds.

1673 BlackRock II Comment Letter. *See also* Federated II Comment Letter (stating that tax-exempt money market funds regularly rely on the twenty-five percent basket during the course of their operations and that three quarters of its tax-exempt money market funds and all but two of its 14 single state funds currently hold securities in their twenty-five percent basket).

1674 *See* DERA Guarantor Diversification Memo, *supra* note 1665.

funds' use over two years.[1675] Therefore, although commenters suggest that the use of the twenty-five percent basket may vary considerably during the course of operation, and commenters did not provide any specific data suggesting otherwise, our staff found that the use of the twenty-five percent basket over a longer period was in fact relatively constant.

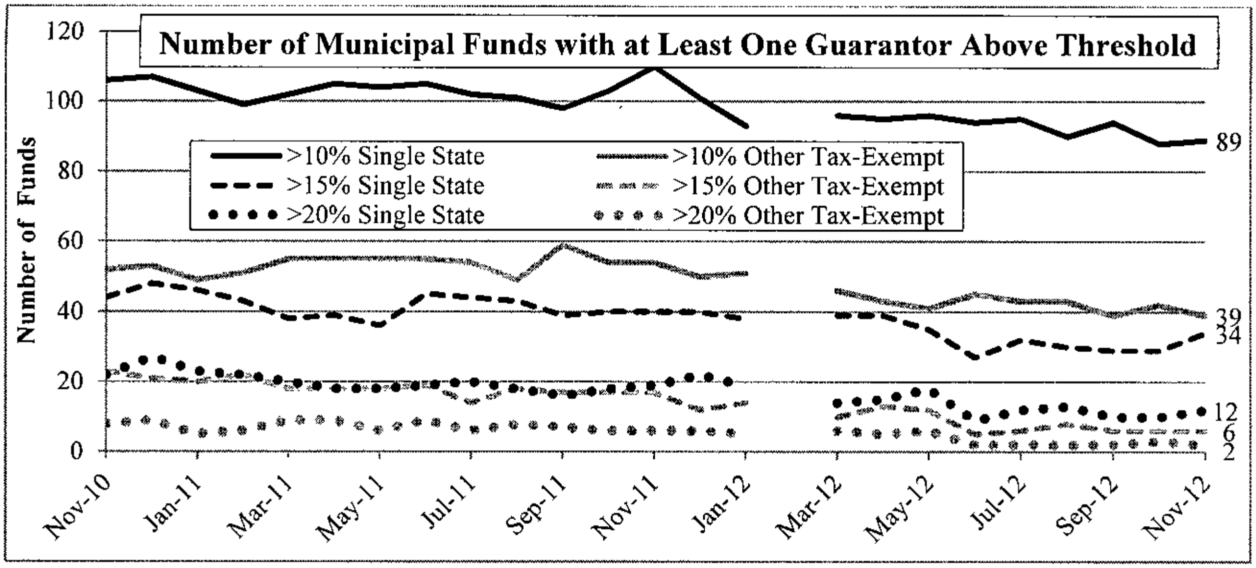
The data and figures provided above, which show that most funds that are using the basket are using the basket between the 15% and 10% thresholds, suggest that eliminating the basket for all money market funds (other than tax-exempt money market funds), as opposed to providing a fifteen percent basket, most effectively addresses our concerns about a money market fund's exposure to a single guarantor or demand feature provider because eliminating the basket provides a significant mitigation of the risks to money market funds caused by their substantial exposure to these providers. After further consideration, we continue to believe that removing the twenty-five percent basket for money market funds (other than tax-exempt money market funds) instead of providing a fifteen percent basket (or other size basket), more appropriately addresses the risk that a fund faces when it is heavily exposed to a single guarantor or demand feature provider.

ii. *Tax-exempt money market funds*

As discussed in greater detail in the DERA Guarantor Diversification Memo, and as discussed further below, DERA staff also analyzed data and figures regarding the use of the twenty-five percent basket by tax-exempt money market funds. DERA staff found that tax-exempt money market funds in general, and single state money market funds in particular, use the twenty-five percent basket to a higher degree than money market funds as a whole. As set

1675 *Id.*

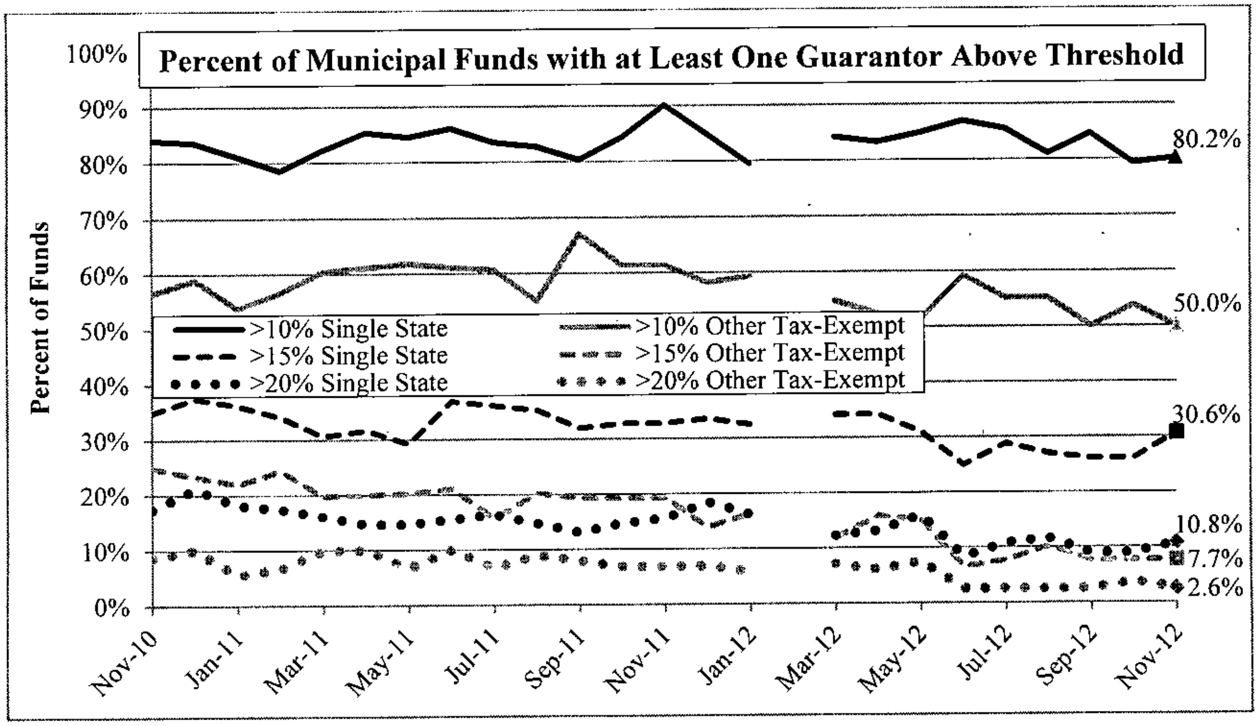
forth below, DERA staff examined the number of other tax-exempt funds and single state funds for which guarantors compose more than 10%, 15%, and 20% of their portfolios, respectively.[1676]



As illustrated below, DERA staff also examined the percent of other tax-exempt funds and single state funds for which guarantors compose more than 10%, 15%, and 20% of their portfolios, respectively.[1677]

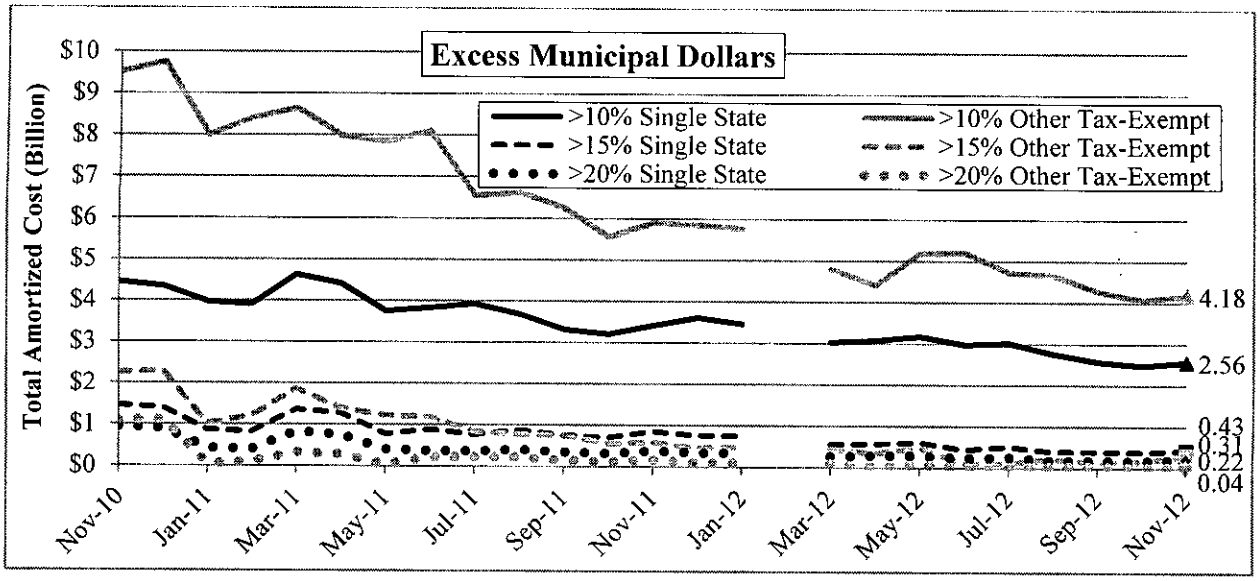
[1676] *Id.* The DERA Guarantor Diversification Memo divides municipal money market funds into two categories, consistent with the two types of municipal money market funds on Form N-MFP (Item 10), "single state funds" and "other tax-exempt funds."

[1677] *Id.*



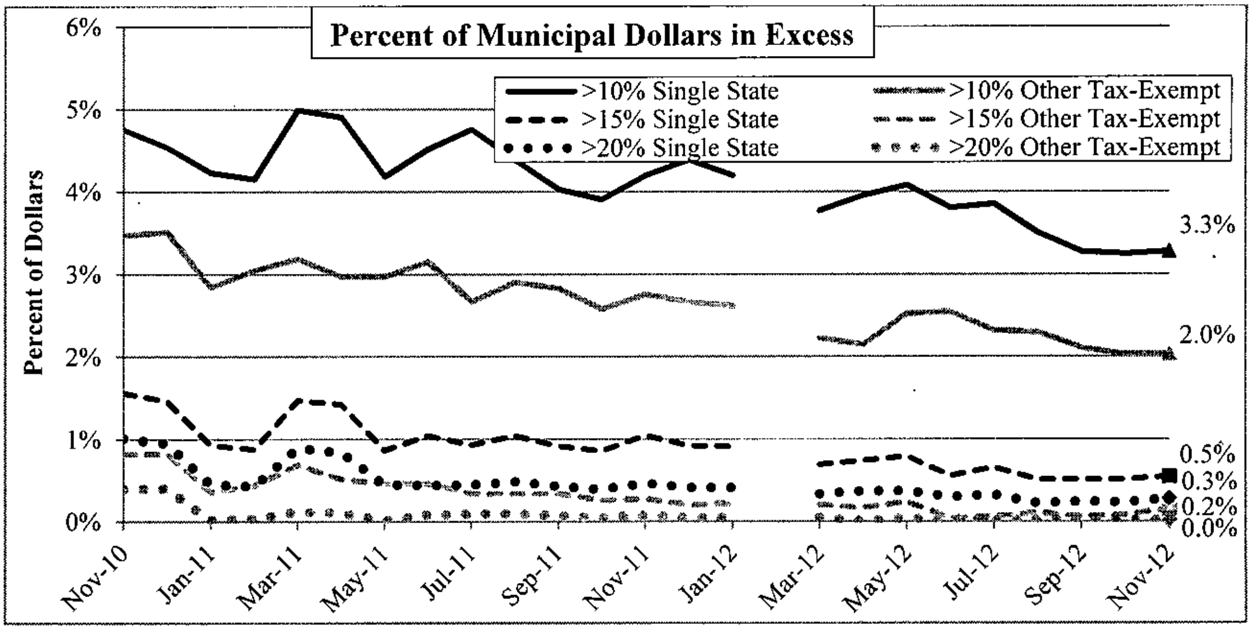
In addition, DERA staff examined the amount of excess exposure that other tax-exempt funds and single state funds have in assets above the 10%, 15%, and 20% thresholds, respectively.[1678]

1678 *Id.*



Lastly, as illustrated below, DERA staff found that only a small percentage of the entire other tax-exempt fund and single state fund industry assets are exposed to guarantors in excess of the 10%, 15%, and 20% thresholds.[1679]

[1679] *Id.*



DERA staff analyzed, among other things: (i) the percentage of tax-exempt money market fund assets exposed to guarantors above the 10% threshold, which shows the percentage of assets that would need to be reinvested if we eliminated the twenty-five percent basket, as proposed; and (ii) the percentage of tax-exempt money market fund assets exposed to guarantors above the 15% threshold, which shows the percentage of assets that will need to be reinvested as a result of the fifteen percent basket that we are adopting today for tax-exempt money market funds. We believe that our staff's analysis of the percentage of assets invested in securities subject to demand features or guarantees in excess of the 10% and 15% guarantor diversification limits, respectively, provides an accurate reflection of the potential impact that elimination or reduction of the twenty-five percent basket would have on other tax-exempt funds and single state funds. We also believe that looking to the percentage of assets, as opposed to the number of funds or excess amount of assets in dollars (which only show absolute numbers), most accurately shows the corresponding level of assets that will need to be reinvested.

The above data shows that the percentage of other tax-exempt funds and single state fund assets exposed to guarantors above the 10% and 15% guarantor diversification limits are relatively small when compared to other municipal money market funds and the money market fund industry as a whole, although the data also shows that other tax-exempt funds and single state funds use the basket to a greater extent than money market funds generally. In addition to acknowledging that the proposed elimination of the basket would have a greater effect on tax-exempt money market funds because of their higher use of the basket, we have also taken into account commenters' concerns, as discussed below, regarding the limited availability of guarantor and demand feature providers for tax-exempt money market funds as opposed to non-tax-exempt money market funds.

b. Additional Considerations

i. *Non-tax-exempt money market funds*

Several commenters generally supported the removal of the twenty-five percent basket.[1680] For example, one commenter argued that eliminating the twenty-five percent basket for all money market funds would be an appropriate step to further reducing concentration risk in money market funds.[1681] Other commenters, however, opposed the removal of the twenty-five percent basket.[1682] Commenters argued that the elimination of the twenty-five percent basket

1680 *See, e.g.,* Barnard Comment Letter; CFA Institute Comment Letter. *See also* U.S. Bancorp Comment Letter (supporting the removal of the twenty-five percent basket for all money market funds); Wells Fargo Comment Letter (supporting the removal of the twenty-five percent basket only for taxable money market funds); Schwab Comment Letter (supporting the removal of the twenty-five percent basket, but recommending that state-specific municipal money market funds be allowed to continue using the basket to some extent).

1681 U.S. Bancorp Comment Letter.

1682 *See, e.g.,* SSGA Comment Letter; ICI Comment Letter; Legg Mason & Western Asset Comment Letter. Most of the commenters that opposed the removal of the twenty-five percent basket focused specifically on the consequences for tax-exempt money market funds. We address their particular concerns regarding tax-exempt money market funds below.

would increase money market funds' reliance on lower quality investments with higher credit risk, particularly due to the limited number of providers of guarantees and demand features.[1683] One commenter argued that since the financial crisis, fewer issuers have been providing guarantees and other credit support for securities to be purchased by money market funds, and that removing the twenty-five percent basket could force managers to purchase paper of lower quality issuers that are unable or unwilling to obtain third-party demand features.[1684] Another commenter stated that consolidation in the banking industry has substantially reduced the pool of high-quality demand feature and guarantee providers, and increased regulatory capital requirements will likely further reduce the number of available providers in coming years.[1685]

As discussed below, we do not believe that the removal of the twenty-five percent basket for non-tax-exempt money market funds will cause money market funds to use lower credit quality guarantors and demand feature providers or potentially reduce liquidity and flexibility for money market funds, and if any such impact were to occur, we expect that it would be limited. As noted above, the data analyzed in the DERA Guarantor Diversification Memo shows, among other things, that most funds, especially non-tax-exempt money market funds, do not use the twenty-five percent basket, and thus we believe that most money market funds will likely not be forced to use lower credit quality guarantors and demand feature providers.[1686] Under today's

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1683 Goldman Sachs Comment Letter; SIFMA Comment Letter; J.P. Morgan Comment Letter; ICI Comment Letter; Legg Mason & Western Asset Comment Letter; Vanguard Comment Letter.

1684 Legg Mason & Western Asset Comment Letter. *See also* ICI Comment Letter (expressing concern that eliminating the twenty-five percent basket would increase rather than decrease risk by increasing a fund's reliance on less creditworthy credit support providers, noting that the universe of institutions issuing or providing guarantees or liquidity for eligible money market fund securities has become limited).

1685 J.P. Morgan Comment Letter.

1686 *See* DERA Guarantor Diversification Memo, *supra* note 1665 and accompanying text.

amendments, non-tax-exempt money market funds will not be required to include more than 10 guarantors or demand feature providers in their portfolios if each one maximized the 10% diversification limit. DERA staff evaluated the exposure to guarantors and found that the top five guarantor parents accounted for a combined total of 43% of the exposure across all money market funds. DERA staff measured the credit risk for each guarantor by credit default swap (CDS) spreads and composite credit ratings (NRSROs) and found that the credit quality of guarantors among the top twenty guarantors is similar to that of the top five guarantors.[1687] Thus, we believe that, if today's amendments cause non-tax-exempt money market funds to include additional guarantors or demand feature providers in the funds' portfolios, there exists a supply of guarantors and demand feature providers that have similar credit quality as the top five guarantors used by funds. As such, we believe that, for non-tax-exempt money market funds that are currently using the twenty-five percent basket, it is likely that these money market funds would be able to use these additional guarantors and demand feature providers and will not be forced to resort to low credit quality guarantors or demand feature providers because of the amended rule.

A few commenters argued that composite credit ratings from NRSROs are not a reliable standalone metric to assess credit quality.[1688] We agree. This is why the DERA memo also assessed credit risk through CDS spreads, which are the market's current assessment of a guarantor's future financial capacity to provide the necessary support. A few commenters also argued that money market funds analyze the credit quality of guarantors using a variety of

1687 *Id.*

1688 *See, e.g.,* Wells Fargo DERA Comment Letter factors other than CDS spreads and composite credit ratings.[1689] While we recognize that money market funds' internal analysis of the credit quality of guarantors and demand feature providers might be different, we believe that using a combination of the objective factors, CDS spreads and composite credit ratings, for the purpose of our staff's analysis is an acceptable alternative to conducting an individual credit risk analysis of guarantors and closely approximates the credit risk of such guarantors and demand feature providers. Thus, after further review, we believe our staff's findings support the conclusion that, to the limited extent a money market fund may need to engage new institutions as providers of guarantees and demand features, there will be a sufficient supply of first tier guarantors in the market. We therefore believe that, even with a 10% guarantor limit for non-tax-exempt money market funds, any increase in guarantor diversification should not lead to deterioration in credit quality.

ii. *Tax-exempt money market funds*

Although a number of commenters opposed the removal of the twenty-five percent basket generally, many commenters specifically opposed the removal of the twenty-five percent basket for tax-exempt money market funds, and single state money market funds in particular.[1690] Some commenters argued that the twenty-five percent basket has not been the reason tax-exempt money market funds have experienced credit events in the past.[1691] For example, one commenter argued that the twenty-five percent basket did not have an adverse impact on tax-exempt money market funds and their shareholders and that significant disruptions should not justify removal of

[1689] *See, e.g.,* Wells Fargo DERA Comment Letter; Dreyfus DERA Comment Letter.

[1690] *See, e.g.,* Federated II Comment Letter; Dreyfus Comment Letter; Wells Fargo Comment Letter; Schwab Comment Letter; Vanguard Comment Letter; BlackRock II Comment Letter.

[1691] *See, e.g.,* Vanguard Comment Letter; Federated II Comment Letter.

the twenty-five percent basket for tax-exempt money market funds.[1692] However, as we discussed in the Proposing Release, in 2008, the concentration of tax-exempt money market funds in guarantee and demand feature providers led to considerable stress in the municipal markets.[1693] During this time municipal issuers had to quickly find substitutes for demand features on which they relied to shorten their securities' maturities.[1694] In addition, at least one provider of demand features and guarantees for many municipal securities held by money market funds avoided bankruptcy in part due to substantial support received from various entities.[1695] We believe the risk that a money market fund faces in cases where the guarantor or demand feature provider comes under significant strain is substantial and that possible external support is unreliable in cases when guarantors or demand feature providers may become stressed. We therefore continue to believe that it is appropriate to amend rule 2a-7 to enhance the diversification requirements by reducing the twenty-five percent basket to a fifteen percent basket, in order to limit a tax-exempt money market fund's exposure to any one guarantor or demand feature provider, thereby mitigating the risk the fund faces when it heavily relies on a single guarantor or demand feature provider.

As discussed above and in the Proposing Release, when evaluating money market funds in the aggregate, most money market funds do not use the twenty-five percent basket and those

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1692 Federated II Comment Letter. *See also* Federated VII Comment Letter (arguing that tax-exempt money market funds weathered problems by relying on the credit of the underlying obligor or working with the obligor to substitute another guarantor).

1693 *See* Proposing Release, *supra* note 25, section III.J.3.

1694 *Id.*

1695 *Id.*

funds that do use the twenty-five percent basket do not make significant use of it.[1696] Commenters, however, argued that tax-exempt money market funds in particular do regularly rely on the twenty-five percent basket.[1697] For example, one commenter stated that as of June 30, 2013, 75% of municipal money market funds made use of the twenty-five percent basket.[1698] Another commenter noted that nine of the top 10 largest tax-exempt money market funds, which represent approximately 40% of the tax-exempt money market fund assets, use the twenty-five percent basket.[1699] As previously discussed, commenters noted that besides using a single guarantor in the twenty-five percent basket, money market funds may also use two guarantors to fill the twenty-five percent basket by having, for example, a 13% exposure to one guarantor and a 12% exposure to another.[1700] The DERA Guarantor Diversification Memo found, as shown above, that 10.8% and 2.6% of "single state funds" and "other tax-exempt funds" had at least one guarantor above the 20% threshold as of November 2012, respectively.[1701] The DERA Guarantor Diversification Memo also found that 30.6% and 7.7% of single state funds and other tax-exempt funds had at least one guarantor above the 15% threshold as of November 2012, respectively. In addition, the memo shows that 80.2% and 50.0% of single state and other tax-exempt funds had at least one guarantor above the 10% threshold as of November 2012, respectively.[1702] DERA

1696 *See* Proposing Release, *supra* note 25, nn.892-893 and accompanying text.

1697 *See, e.g.*, SIFMA Comment Letter; Fidelity Comment Letter.

1698 SIFMA Comment Letter.

1699 Fidelity Comment Letter (noting that only one of those nine funds was over 15% and recommending a fifteen percent basket for all money market funds).

1700 *See, e.g.*, Comment Letter of Investment Company Institute DERA (Apr. 22, 2014) ("ICI DERA Comment Letter").

1701 *See* DERA Guarantor Diversification Memo, *supra* note 1665.

1702 *Id.*

staff's findings are consistent with the data provided by the commenters above, which suggest that tax-exempt money market funds use the twenty-five percent basket to a greater extent than non-tax-exempt money market funds.

One commenter argued that although the DERA staff analysis demonstrates that most tax-exempt money market funds use the twenty-five percent basket, the sample period (2010-2012) is not appropriate because there were no events during this time period that caused stress on money market funds.[1703] We note, however, that another commenter stated that it was beneficial for money market funds to have the flexibility of the twenty-five percent basket during the Eurozone concerns in 2011,[1704] which occurred during our sample time period. As discussed above, the data analyzed in the DERA Guarantor Diversification Memo shows that over the course of two years, the use of the twenty-five percent basket remained steady and there was minimal variability in the use of the basket over time, even when certain events during this time period caused stress on money market funds.[1705]

Many commenters expressed concern regarding the impact of the proposed removal of the twenty-five percent basket for tax-exempt money market funds, and single state money market funds in particular, due to the limited availability of demand feature providers and guarantors for these types of funds. Commenters argued that the elimination of the twenty-five percent basket would limit a tax-exempt money market fund's flexibility to obtain greater exposure to strong credit sources in times when high credit quality may be scarce.[1706] A number

1703 *See* Wells Fargo DERA Comment Letter.

1704 *See* Fidelity DERA Comment Letter.

1705 *See* DERA Guarantor Diversification Memo, *supra* note 1665.

1706 Vanguard Comment Letter; Invesco Comment Letter; BlackRock II Comment Letter. *See also* Dreyfus of commenters also argued that the removal of the twenty-five percent basket will make it difficult for tax-exempt money market funds to acquire sufficient liquid assets.[1707] Commenters argued that there is a relatively narrow group of banks and other financial institutions that provide much of the liquidity in the short-term municipal and TOB markets,[1708] and that single state funds in particular have even fewer issuers available to them.[1709]

One commenter stated that with a constrained supply of securities with diverse guarantors, a twenty-five percent basket may actually allow a manager to reduce risk by avoiding or reducing exposure to the relatively weakest guarantors.[1710] Some commenters also argued that the twenty-five percent basket is an important tool that money market funds may use to accommodate the variability and unpredictability of supply and demand in the municipal market.[1711] We recognize commenters' concerns regarding the proposed removal of the twenty-five percent basket for tax-exempt money market funds, and single state money market funds in particular, due to the limited availability of demand feature providers and guarantors for these types of funds. As noted above, we believe that requiring tax-exempt money market funds to limit exposure to any one guarantor or demand feature provider while still providing tax-exempt money market funds with a fifteen percent basket, will address many of the commenters'

Comment Letter; ICI Comment Letter; Legg Mason & Western Asset Comment Letter; Federated VII Comment Letter; Federated II Comment Letter.

1707 Wells Fargo Comment Letter; Invesco Comment Letter; BlackRock II Comment Letter; SIFMA Comment Letter; Goldman Sachs Comment Letter; Federated II Comment Letter. *See also* Fidelity Comment Letter.

1708 *Id.*

1709 *See, e.g.,* BlackRock II Comment Letter.

1710 Wells Fargo Comment Letter.

1711 *See, e.g.,* Dreyfus Comment Letter; BlackRock II Comment Letter. *See also* Wells Fargo DERA Comment Letter (noting that the basket provides a means for money market funds to limit portfolio credit risk by concentrating exposure in the highest quality guarantor).

concerns regarding the limited supply of demand feature providers and guarantors for tax-exempt money market funds.

Several commenters suggested we reduce the twenty-five percent basket to a fifteen percent basket for tax-exempt money market funds.[1712] One commenter stated that, although the twenty-five percent basket may not have been heavily used recently by money market funds, the availability of a basket would provide useful flexibility to money market funds on occasion.[1713] A second commenter argued that a fifteen percent basket would achieve the objective of balancing diversification and flexibility, while reducing the potential for unintended consequences.[1714] After further consideration, and in light of the data for tax-exempt money market funds and commenters' concerns and recommendations regarding the removal of the basket for tax-exempt money market funds, we have decided to allow tax-exempt money market funds, including single state funds, to rely on a fifteen percent basket, under which as much as 15% of the value of securities held in a tax-exempt money market fund's portfolio may be subject to guarantees or demand features from a single institution. Although eliminating the basket for tax-exempt money market funds would reduce concentration risk by requiring tax-exempt money market funds to lessen their exposure to a single guarantor or demand feature

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1712 *See, e.g.,* Goldman Sachs Comment Letter; Fidelity DERA Comment Letter. *See also* Schwab Comment Letter (recommending that single state money market funds be allowed to continue using the twenty-five percent basket except that within the basket no single guarantor or demand feature provider could represent more than 15% of the fund's assets). Some commenters suggested we reduce the twenty-five percent basket to a fifteen percent basket for all money market funds (both tax-exempt funds and non-tax-exempt funds). *See* Goldman Sachs Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter. *See also* J.P. Morgan Comment Letter (recommending that instead of eliminating the basket, we mandate a maximum guarantee and/or demand feature exposure that can be held within the basket in any one entity, such as at a 15% cap).

1713 Goldman Sachs Comment Letter (suggesting that our data is limited to a short period of time and arguing that it supports the conclusion that a smaller basket would satisfy portfolio managers of most funds).

1714 Fidelity Comment Letter.

provider, we are concerned that eliminating the basket entirely could cause these funds to invest in weaker credits. We believe that a reduction of the twenty-five percent basket to a fifteen percent basket for tax-exempt money market funds, which the DERA Guarantor Diversification Memo shows use the basket more than non-tax-exempt money market funds, appropriately addresses the concerns related to heavy concentration in a single guarantor or demand feature provider as well as the concerns that eliminating the twenty-five percent basket for tax-exempt money market funds could lead to an overall deterioration of credit quality or liquidity because tax-exempt funds may have to obtain guarantees or demand features from less creditworthy institutions due to a limited supply of guarantees and demand features.

We believe for several reasons that reducing the twenty-five percent basket to a fifteen percent basket should not significantly restrict the ability of guarantors to fill the needed capacity as the guarantors become more diversified. First, the data analyzed in the DERA Guarantor Diversification Memo shows 0.5% and 0.2% of the guarantor's dollars are excess dollars above the 15% threshold when single state funds and other tax-exempt funds, respectively, are considered separately in November 2012, meaning little if any additional capacity has to be developed.[1715] Second, it is reasonable to expect that a reduction by one money market fund (because its exposure to a particular guarantor is too high) could become a purchasing opportunity for another money market fund whose exposure to a particular guarantor is below the 15% threshold. Third, should any of the top guarantors listed in the DERA Guarantor Diversification Memo choose to increase their capacity, this could become a purchasing opportunity for a money market fund since the amount of excess dollars above the 15% threshold

1715 *See* DERA Guarantor Diversification Memo, *supra* note 1665.

is smaller than the amount needed for the remaining funds to reach the 10% or 15% threshold for the same guarantor. Lastly, it is also reasonable to expect that if a reduction by any of the top guarantors does occur, this could become an opportunity for another guarantor to step in. We therefore believe that, although other tax-exempt funds and single state funds may currently use the twenty-five percent basket to a higher degree than money market funds generally and may face greater supply constraints than non-tax-exempt funds, because these funds will be permitted to use a fifteen percent basket, any increase in guarantor diversification should not lead to deterioration in credit quality and any negative effects for tax-exempt money market funds that currently use the twenty-five percent basket will be minimal.[1716]

A couple of commenters argued that VRDNs provide a significant source of liquidity for money market funds and that the proposed removal of the twenty-five percent basket would therefore have a negative impact on a fund's ability to access liquidity through VRDNs.[1717] In addition, one of these commenters argued that the combination of regulatory requirements and the diminishing number of financial guaranty companies and highly rated banks has significantly reduced the number of entities offering credit support for VRDNs,[1718] noting that in late 2012,

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1716 *See supra* note 1665 and accompanying text (discussing level of assets and supply of providers).

1717 Legg Mason & Western Asset Comment Letter; Invesco Comment Letter. The interest rates on VRDNs are typically reset either daily or every seven days. VRDNs include a demand feature that provides the investor with the option to put the issue back to the trustee at a price of par value plus accrued interest. This demand feature is supported by a liquidity facility such as letters of credit, lines of credit, or standby purchase agreements provided by financial institutions. The interest-rate reset and demand features shorten the duration of the security and allow it to qualify as an eligible security under Rule 2a-7. *See* HANDBOOK OF FIXED INCOME SECURITIES 237 (Frank J. Fabozzi & Steven V. Mann eds., 8th ed. 2012) nn.735-36.

1718 Invesco Comment Letter (stating that, while total municipal market debt outstanding has held stable for the past five years at about $3.7 trillion, VRDNs outstanding have declined steadily from $444.9 billion in December 2008 to only $246.8 billion in June 2013).

tax-exempt money market funds had an average of 83% of total assets invested in VRDNs.[1719] As discussed in the Proposing Release, and as discussed further below, concerns about the creditworthiness of guarantors and demand feature providers have reduced the amount of VRDNs outstanding since 2010.[1720] We expect that reducing the twenty-five percent basket to a fifteen percent basket instead of eliminating the basket will alleviate commenters' concerns regarding the availability of VRDNs. In addition, because the amount of outstanding VRDNs and other short-term municipal debt has decreased 47% between 2008 and 2013, the top guarantors will have some additional capacity built in should the overall demand for such securities continue to decrease into the future.[1721] Rule 2a-7 restricts money market funds to short-term maturities, which in turn limits the municipal debt in money market funds to VRDNs and other short-term municipal debt.[1722] In addition, analyzing money market fund municipal debt holdings and the availability of acceptable money market fund municipal securities (VRDNs and other short-term municipal debt) from 2002 to 2013 suggests that the municipal debt market is able to adjust to both increasing and decreasing demand for such securities.[1723]

1719 *Id.* (noting that there has been a marked decline in the issuance of credit enhanced securities and that the contraction in the availability of these securities hinders the level of diversification that mangers can achieve in tax-exempt money market fund portfolios; also providing data that securities issued with a letter of credit, standby purchase agreement or guarantee comprised 25.6% of total municipal market issuance in 2008 and that in 2012 these securities made up 9.5% of total issuance).

1720 *See* Proposing Release, *supra* note 25, at section III.E.

1721 *See infra* note 1723.

1722 Our staff's review of portfolio holdings of single state funds and other tax-exempt funds from Form N-MFP filings, using aggregate amortized values from November 2010 to December 2013, found that these funds held approximately 71% in VRDNs and 18% in other municipal debt.

1723 The Federal Reserve Board's *Flow of Funds of the United States* provides the amount of municipal securities held by money market funds and the overall market. It ranged from about $270 billion in 2002 to a maximum of $520 billion in 2008 only to decline to approximately $305 billion by 2013. The decrease shows that $215 billion ($520 - $305) or 39% exited the money market fund industry since the financial crisis. One can closely approximate these money market fund holdings by summing the amount of outstanding VRDNs (Source: Securities Market and Financial Markets Association website) with the

c. Additional economic analysis

Our diversification amendments, including (i) the amendment to require that money market funds treat the sponsors of ABS as guarantors subject to rule 2a-7's 10% diversification limit applicable to guarantees and demand features, unless the money market fund's board of directors (or its delegate) determines that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity ("ABS amendment") and (ii) the amendment to remove the twenty-five percent basket for money market funds other than tax-exempt money market funds and to reduce to fifteen percent, rather than eliminate, the twenty-five percent basket for tax-exempt money market funds, including single state money market funds ("twenty-five percent basket amendment"),[1724] are designed to provide a number of benefits, as discussed in more detail below. DERA staff's review of data suggests that our ABS amendment and twenty-five percent basket amendment (treating only ABCP sponsors as guarantors for purposes of this analysis)[1725] would have little impact on the majority of money market funds, which do not make use of the

amount of outstanding short term municipal debt (Source: Federal Reserve Board's *Flow of Funds of the United States*), suggesting that money market funds hold nearly all the VRDNs and short-term municipal debt. This sum has nearly halved from a high of $500 billion in 2008 to $265 billion in 2013. This corresponds to a decrease of $235 billion, or 47%, of short term municipal debt and VRDNs money market funds holdings. We note, as well, that the overall municipal debt market has absorbed these large money market fund outflows, and, in fact, the overall municipal debt market has grown approximately $200 billion during this same time period. *See* Federal Reserve Board, *Flow of Funds of the United States, available at* http://www.federalreserve.gov/releases/z1 and Securities Market and Financial Market Association Reports, *available at* http://www.sifma.org/research/reports.aspx.

1724 *See infra* note 1660.

1725 Our staff assumed when reviewing the Form N-MFP data that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. For this purpose, our staff considered an ABCP conduit to be fully supported when the program's investors are protected against asset performance deterioration and primarily rely on the ABCP sponsor to provide credit, liquidity, or some other form of support to ensure full and timely repayment of ABCP, and considered an ABCP conduit to be partially supported when the ABCP sponsor, although not fully supporting the program, provided some form of credit, liquidity, or other form of support. *See also infra* note 1726.

twenty-five percent basket, and would likely have a minimal impact on those funds that do. Because tax-exempt money market funds make greater use of the basket than non-tax-exempt money market funds and may face greater constraints regarding the availability of demand feature providers and guarantors, we have provided tax-exempt money market funds with the ability to use a fifteen percent basket. DERA staff's review of data suggests that the effect of our twenty-five percent basket amendment on tax-exempt money market funds would thus also have little impact on the majority of tax-exempt money market funds.

Based on the data analyzed in the DERA Guarantor Diversification Memo, our staff found that approximately 131 funds, or 21.9% of all funds submitting Form N-MFP for November 2012, reported that they made use of the twenty-five percent basket for guarantees and demand features, even when we treat sponsors of ABCP as guarantors (and thus subject to a 10% diversification limitation). Thus, although a minority does use the twenty-five percent basket, the majority of money market funds do not. Furthermore, money market funds as of February 28, 2014, had invested 16.5% of their assets in ABS and securities subject to demand features or guarantees, suggesting that issuers have a ready supply of money market fund investors eligible to purchase their securities. The 131 funds that used the twenty-five percent basket had, on average, $31.4 billion of their assets invested in excess of the 10% diversification limitation we are adopting today (*i.e.*, in the twenty-five percent basket) as of November 2012.[1726]

[1726] This estimate likely overstates the number of funds and the amount of money market funds' assets that could be affected by our ABS amendments for three reasons. First, it assumes that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. Under our amendments, however, an ABCP (or other ABS) sponsor would not be deemed to guarantee the ABCP if the board (or its delegate) determines the fund is not relying on the sponsor's financial strength or its ability or willingness to provide support to determine the ABCP's quality or liquidity. We did not assume sponsors of other types of ABS guaranteed those ABS because we understand that other forms of ABS offered to money market funds either do not typically have sponsor support or, if they are supported, the

Furthermore, data as of November 2012, shows that 98.9% of total money market fund assets are not in funds' twenty-five percent baskets. Thus, because most money market funds are not using the twenty-five percent basket to gain high levels of exposure to any one particular guarantor or demand feature provider and because a very high percentage of money market fund assets are not in a twenty-five percent basket, we believe any negative effects for these non-tax-exempt money market funds will generally be minimal. In addition, we believe that, if today's amendments cause non-tax-exempt money market funds to include additional guarantors or demand feature providers in the funds' portfolios, there exists a sufficient supply of guarantors and demand feature providers.

As discussed above, and as addressed by certain commenters, we recognize that tax-exempt money market funds, and in particular, single state tax-exempt money market funds, use the twenty-five percent basket to a greater degree than other types of money market funds. DERA staff found that approximately 128 tax-exempt funds, or 67.7% of all tax-exempt funds submitting Form N-MFP for November 2012, made use of the twenty-five percent basket. For single state funds, our staff found that approximately 89 single state funds, or 80.2% of single state funds submitting Form N-MFP for November 2012 made use of the twenty-five percent basket. However, tax-exempt money market funds, including single state funds, that do use the twenty-five percent basket generally do not make significant use of it. The 128 tax-exempt

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support typically is in the form of a guarantee or demand feature, which would already be included in our calculation of exposure to providers of demand features and guarantees. Second, Form N-MFP data does not differentiate between funds that would have had exposure in excess of 10% upon the acquisition of a demand feature or guarantee (which will not be permitted under our amendments) and those funds that were under that level of exposure at the time of acquisition but the fund later decreased in size, increasing the fund's exposure above the 10% limit (which will be permitted under our amendments). Third, where a fund owned securities issued by or subject to demand features or guarantees from affiliated institutions, we treated the separate affiliated institutions as single institutions for purposes of these estimates.

money market funds that used the twenty-five percent basket had, on average, 2.4% of their assets invested in excess of the 10% diversification limitation we are adopting today (*i.e.*, in the twenty-five percent basket), and the 89 single state money market funds that used the twenty-five percent basket had, on average, 0.5% of their assets invested in access of the 15% diversification limitation as of November 2012.[1727] In addition, the 128 tax-exempt money market funds that used the twenty-five percent basket had, on average, 0.3% of their assets invested in excess of the 15% diversification limitation we are adopting today, and the 89 single state money market funds that used the twenty-five percent basket had, on average, 0.5% of their assets invested in excess of the 15% diversification limitation as of November 2012.[1728]

Although we understand that non-tax-exempt money market funds, and tax-exempt money market funds in particular, may have made greater use of the twenty-five percent basket in the past (and might do so in the future if we fully retained the twenty-five percent basket), we are concerned that funds were previously exposed to concentrated risks inconsistent with the purposes of rule 2a-7's diversification requirements as discussed above. We continue to believe that amending rule 2a-7 to tighten diversification limits for securities subject to guarantees or demand features from a single institution for both non-tax-exempt money market funds and tax-exempt money market funds will mitigate some of the risk that a money market fund faces by limiting a fund's exposure to any one guarantor or demand feature provider.

The principal effect of the ABS amendment and twenty-five percent basket amendment we are adopting today may be to restrain some managers of money market funds from being

1727 *Id.*

1728 *Id.*

heavily exposed to an individual ABS sponsor and from making use of the twenty-five percent basket in the future, under perhaps different market conditions.[1729] Our diversification amendments may deny fund managers some flexibility in managing fund portfolios and could decrease fund yields. To assess our amendment's effect on yield, our staff examined whether the 7-day gross yields of funds that use the twenty-five percent basket were higher than the 7-day gross yields for those funds that do not.[1730] Our staff found: (i) for other tax-exempt funds, the average yield for funds using the twenty-five percent basket was 0.0893% as compared to the average yield for other tax-exempt funds that did not use the twenty-five percent basket of 0.0987% and the average yield for funds using the twenty-five percent basket above the 15% threshold was 0.0736% as compared to the average yield for other tax-exempt funds that either did not use the twenty-five percent basket or used the twenty-five percent basket below the 15% threshold of 0.0951%; (ii) for single state funds, the average yield for funds using the twenty-five percent basket was 0.0886% as compared to the average yield for single state funds that did not use the twenty-five percent basket of 0.0754% and the average yield for single state funds using the twenty-five percent basket above the 15% threshold was 0.1075% as compared to the average yield for singe state funds that either did not use the twenty-five percent basket or used the twenty-five percent basket below the 15% threshold of 0.0790%; and (iii) for prime money

1729 One commenter suggested that compliance with our amendments would require it to reallocate or sell its money market fund portfolio securities. *See* Fidelity Comment Letter (also suggesting that we extend our nine-month implementation period for modifying the twenty-five percent basket due to the need for additional time for transactions). However, funds with investments in excess of those permitted under the revised rule are not required to sell the excess investments to come into compliance. The amendments require a fund to calculate its exposure to issuers of demand features and guarantees as of the time the fund acquires a demand feature or guarantee or a security directly issued by the issuer of the demand feature or guarantee. *See* rules 2a-7(d)(3)(i) and (iii).

1730 We assumed that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. *See supra* note 1726.

market funds, the average yield for funds using the twenty-five percent basket was 0.1740% as compared to the average yield for prime money market funds that did not use the twenty-five percent basket of 0.1875%.[1731] The prime money market fund yield differences may not, of course, be caused by the use of the twenty-five percent basket, but may instead reflect the overall risk tolerance of fund managers that take advantage of the twenty-five percent basket. In addition, we acknowledge that the current low interest-rate environment may cause the yield spread in each comparison above to be less than if we were measuring the yield spreads in a higher interest rate environment.

We requested comment as to whether there would be a significant impact on fund yield, and if so, how significant. Although commenters did not address the specific impact on fund yield, one commenter stated that our staff's analysis assumed that funds could replace securities guaranteed or subject to a demand feature in a twenty-five percent basket with the same securities that were held by the funds that do not use the twenty-five percent basket, and suggested that the elimination of the basket might therefore decrease both yield and liquidity of tax-exempt funds.[1732] We recognize that it is possible that one money market fund may not be able to obtain the exact securities of another money market fund that is not currently relying on the basket. However, as discussed above, our staff's analysis shows that there exists a sufficient supply of first tier guarantors in the market for funds to invest. Therefore, after further consideration, we believe that the effect on yield, given the 7-day gross yields of funds that use the twenty-five percent basket versus the 7-day gross yields for those funds that do not, will be

1731 These averages are derived from Form N-MFP data as of February 28, 2014, weighted by money market funds' assets under management.

1732 Federated VII Comment Letter.

minimal.

Our twenty-five percent basket amendment requires non-tax-exempt money market funds that use the twenty-five percent basket, and tax-exempt money market funds that use the twenty-five percent basket at levels above the fifteen percent threshold, or that would use it in the future, to either not acquire certain demand features or guarantees (if the fund could not assume additional exposure to the provider of the demand feature or guarantee) or to acquire them from different institutions. Funds that choose the latter course could thereby increase demand for providers of demand features and guarantees and increase competition among their providers. If new entrants do not enter the market for demand features and guarantees in response to this increased demand, reducing the twenty-five percent basket to a fifteen percent basket for tax-exempt money market funds, and removing the twenty-five percent basket for all other money market funds, could result in money market funds acquiring guarantees and demand features from lower quality providers than those the funds use today, although, as discussed above, we expect such potential effect to be mitigated due to the available supply of first-tier guarantors and demand feature providers that have similar credit quality as the top guarantors that are used by funds. If new entrants do enter the market (or if current participants increase their participation), the effect on money market funds would depend on whether these new entrants (or current participants) are of high or low credit quality as compared to the providers money market funds would use absent our amendments.

Our ABS amendment and twenty-five percent basket amendment also may increase the costs of monitoring the credit risk of funds' portfolios or make that monitoring less efficient, to the extent they are more diversified under our amendments and money market fund advisers must expend additional effort to monitor the credit risks posed by a greater number of guarantors and demand feature providers. Although we cannot provide a point estimate of these costs, and commenters did not provide us with any data that would assist us with a point estimate, we expect that these costs would be included in our broader cost estimates as discussed above in section III.I.1. A money market fund that could not acquire a particular guarantee or demand feature under our amendments could, for example, be able to acquire a guarantee or demand feature from another institution in which the fund already was invested, at no additional monitoring costs to the fund.

Issuers also could incur costs if they were required to engage different providers of demand features or guarantees under our amendments, which could negatively affect capital formation. This could occur because an issuer might otherwise have sought a guarantee or demand feature from a particular bank, but might choose not to use that bank because the money market funds to which the issuer hoped to market its securities could not assume additional exposure to the bank. If issuers were unable to receive demand features or guarantees from banks (or other institutions) to which they would have turned absent our amendments, they would have to engage different banks, which could make the offering process less efficient and result in higher costs if the different banks charged higher rates. Issuers of securities with guarantees or demand features (*e.g.*, issuers of longer-term securities that can be sold to money market funds only with a demand feature) also could be required to broaden their investor base or seek out different providers of guarantees or demand features under our amendments, which could make their offering process less efficient or more costly.

As discussed above, some commenters argued that single state funds in particular would be negatively affected by the removal of the twenty-five percent basket.[1733] We believe that providing single state funds a fifteen percent basket retains much of the flexibility for single state funds to invest in securities subject to guarantees or demand features while also limiting the extent to which a single state fund can become exposed to any one guarantor or demand feature provider. Although our amendments reduce the twenty-five percent basket for all single state funds, we are not changing the application of rule 2a-7's 5% issuer limit to single state funds, which today applies only to 75% of a single state fund's total assets.[1734] We historically have applied the issuer diversification limitation differently to single state funds, recognizing that "single state funds face a limited choice of very high quality issuers in which to invest" and, therefore, that there is a risk that "too stringent a diversification standard could result in a net reduction in safety for certain single state funds."[1735] The market for demand features and guarantees, in contrast, is national for most single state funds and therefore may not be subject to the same supply constraints as is the market for issuers in which single state funds may directly invest. However, the market for demand features and guarantees for some single state funds is not national. For example, the state of California through the California State Teachers Retirement System is a guarantor for securities held in California municipal money market fund portfolios as reported on Form N-MFP. Additional analysis of the data in the DERA Guarantor Diversification Memo shows that 74% of the single state fund's excess guarantees above the 15% threshold on average come from California municipal money market funds (39%), New

1733 *See, e.g.* BlackRock II Comment Letter; Schwab Comment Letter; Federated VII Comment Letter; Dreyfus Comment Letter.

1734 *See* current rule 2a-7(c)(4)(i)(B) and rule 2a-7(d)(3)(i)(B).

1735 *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] ("1996 Adopting Release"), at text following n.38.

York municipal money market funds (24%), and Massachusetts municipal money market funds (11%). All other state municipal money market funds account for 5% or less of the excess guarantees dollars above the 15% threshold. As such, we would expect that in terms of the amount of assets, California, New York, and Massachusetts may be affected more than other states. However, as we discussed earlier, we expect the impact to be minimal since the amount of excess guarantee dollars above the 15% threshold is less than 0.5% of the single state guarantee dollars.[1736] This may be reduced further if other single state funds with guarantees below the 10% and 15% threshold choose to increase their percent exposures to those guarantors with excess exposure in other funds.

We do not expect that our ABS and twenty-five percent basket diversification amendments will result in operational costs for funds. We understand that money market funds generally have systems to monitor their exposures to guarantors (among other things) and to monitor the funds' compliance with rule 2a-7's current 10% demand feature and guarantee diversification limit. We expect that money market funds could use those systems to track exposures to ABS sponsors under our amendments and could continue to track the funds' compliance with a 10% demand feature and guarantee diversification limit. To the extent a money market fund did have to modify its systems as a result of our ABS and twenty-five percent basket diversification amendments, we expect that the money market fund would make those modifications when modifying its systems in response to our amendments to require money market funds to aggregate exposure to affiliated issuers for purposes of rule 2a-7's 5%

[1736] *See* DERA Guarantor Diversification Memo, *supra* note 1665.

diversification limit, for which we provide cost estimates above.[1737] Because the costs estimated above are those associated with activities typically involved in making systems modifications, we expect they also would cover any systems modifications associated with our ABS and twenty-five percent basket diversification amendments.

In the Paperwork Reduction Act analysis in section IV.A.1 below, we identified certain initial and ongoing hour burdens and associated time costs related to our diversification amendments. Specifically, our ABS amendment requires that the board of directors adopt written procedures requiring periodic evaluation of any determinations made regarding instances in which the fund is not relying on the ABS sponsor's financial strength or its ability or willingness to provide quality or liquidity. Furthermore, for a period of not less than three years from the date when the evaluation was most recently made, the fund must preserve and maintain in an easily accessible place a written record of the evaluation. These requirements are a collection of information under the Paperwork Reduction Act, and are designed to help ensure that the objectives of the diversification limitations are achieved. We estimate the one-time burden to prepare and adopt these procedures will be 1,368 hours at $1,130,880 in total time costs for all money market funds and we estimate that the annual burden would be approximately 608 burden hours and $842,080 in total time costs for all money market funds. We also note that a board can delegate its responsibility to determine whether the fund is relying on the ABS sponsor's financial strength or its ability or willingness to provide quality or liquidity pursuant to rule 2a-7.[1738] To the extent that a board delegates this responsibility, it may incur additional costs

1737 *See supra* note 1625 and accompanying text.

1738 *See* rule 2a-7(j).

related to its oversight of such a delegate, although we expect that any such additional costs would be minimal.

J. Amendments to Stress Testing Requirements

We are adopting amendments to the stress testing requirements under rule 2a-7, with modifications from the proposal in response to comments. Specifically, we are adopting reforms to the current stress testing provisions that will require funds periodically to test their ability to maintain weekly liquid assets of at least 10% and to minimize principal volatility[1739] in response to specified hypothetical events that include (i) increases in the level of short-term interest rates, (ii) the downgrade or default of particular portfolio security positions, each representing various exposures in a fund's portfolio, and (iii) the widening of spreads in various sectors to which the fund's portfolio is exposed, each in combination with various increases in shareholder redemptions.[1740] The fund adviser must report the results of such stress testing to the board, including such information as may be reasonably necessary for the board of directors to evaluate the stress testing results.[1741] We discuss these requirements and the modifications from the proposal in further detail below.

1. Overview of Current Stress Testing Requirements and Proposed Amendments

The current stress testing requirements, adopted in 2010, require that the fund adopt procedures providing for periodic testing of the fund's ability to maintain a stable price per share

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1739 Stable NAV funds will continue to be required to test their ability to maintain a stable NAV. *See* rule 2a-7(g)(8)(i). Additionally, as discussed below, we recognize that fund advisers and boards are more likely to be concerned with, and the hypothetical events are focused on, downside volatility.

1740 *Id.*

1741 *See* rule 2a-7(g)(8)(ii).

based on (but not limited to) certain hypothetical events. These hypothetical events include a change in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, and the 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. As we discussed in the Proposing Release, we have monitored the stress testing requirement and how different fund groups have approached its implementation in the marketplace. Through our staff's examinations of money market fund stress testing procedures, we have observed disparities in the quality and comprehensiveness of stress tests, the types of hypothetical circumstances tested, and the effectiveness of materials produced by fund managers to explain the stress testing results to boards. For example, some funds test for combinations of events, as well as for correlations between events and between portfolio holdings, whereas others do not. As discussed in the proposal, we believe that an evaluation of combinations of events and correlations among portfolio holdings is an important part of a fund's stress testing.[1742]

We also noted in the proposal that we have had several opportunities to assess the effectiveness of the stress testing requirements during periods of market stress, including the 2011 Eurozone debt crisis and the 2011 U.S. debt ceiling impasses. We further assessed the role of stress testing in fund boards' assessment of fund risks during the 2013 U.S. debt ceiling impasse. Our staff has observed that funds that had strong stress testing procedures were able to use the results of those tests to better manage their portfolios and better understand and minimize

[1742] *See* Proposing Release, *supra* note 25, at section III.L.

the risks associated with these events.[1743]

Finally, we also noted that, both with stable NAV and floating NAV funds, we believe that stress testing the liquidity of money market funds could enhance a fund board's understanding of the risks to the fund related to periods of heavy shareholder redemptions and could help the fund manage those risks. We also noted that from the staff's review of stress testing by funds, some funds already incorporate an analysis of their ability to maintain liquidity in their stress tests.[1744]

Considering this information and experience, the Commission proposed certain modifications, enhancements, and clarifications to the current stress testing requirements in rule 2a-7 to strengthen the stress testing requirements. First, we added a proposed requirement for each fund to stress test its ability to avoid having its weekly liquid assets fall below 15% of all fund assets. Under the floating NAV alternative, we also proposed removing the requirement that floating NAV funds test their ability to maintain a stable share price. Additionally, we proposed certain enhancements and clarifications to the list of hypothetical events that funds were required to include in their stress testing. Finally, we proposed to modify the requirements to report results to the board, proposing an additional requirement that the fund adviser include such information as may be reasonably necessary for the board of directors to evaluate the stress testing.[1745]

Comments on the proposed changes to the stress testing requirement were mixed. Some

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1743 *Id.*

1744 *Id.*

1745 *Id.*

commenters supported the proposed reforms to varying degrees.[1746] Others opposed them.[1747] Commenters who supported the reforms suggested that they will enable better management of money market fund risk and help address run incentives by heightening board awareness of how events can affect liquidity and share price.[1748] Commenters who opposed the reforms indicated that they believed the current stress testing requirements were sufficient, and that the reforms might be costly, difficult to implement, and provide unnecessary information to boards.[1749] Two commenters believed that stress testing should not be required for floating NAV funds.[1750] Other commenters believed that stress testing requirements should continue to apply to floating NAV funds.[1751] These comments are discussed in more detail below.

2. *Stress Testing Metrics*

a. Liquidity

As proposed, we are requiring money market funds to test their liquidity, but have modified the threshold to require funds to test their ability to maintain 10% weekly liquid assets from the 15% proposed.[1752] This change is consistent with the modification from the proposal

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1746 *See, e.g.*, TIAA-CREF Comment Letter; BlackRock II Comment Letter; MFDF Comment Letter; Comment Letter of Treasurer, State of Connecticut (Sept. 17, 2013) ("Conn. Treasurer Comment Letter"); Barnard Comment Letter; Santoro Comment Letter.

1747 *See, e.g.*, Federated VIII Comment Letter; ICI Comment Letter; Schwab Comment Letter; Legg Mason & Western Asset Comment Letter; Dreyfus Comment Letter.

1748 *See, e.g.*, BlackRock II Comment Letter (noting that stress testing plays a critical role in a board's understanding of money market fund risks).

1749 *See, e.g.*, ICI Comment Letter (noting that there are limitations to stress testing and of fund directors' capacity to review and interpret stress tests, which could lead to diminishing returns as the number and complexity of stress tests increase).

1750 *See* Deutsche Comment Letter; Legg Mason & Western Asset Comment Letter.

1751 *See, e.g.*, BlackRock II Comment Letter; Fidelity Comment Letter; MSCI Comment Letter.

1752 *See* rule 2a-7(g)(8)(i).

regarding the threshold of weekly liquid assets that will trigger a default liquidity fee.[1753] Several commenters generally supported the proposed requirement that funds test their liquidity.[1754] One commenter supported the proposal that funds test against the 15% threshold, and added that the commenter already tests against multiple liquidity thresholds and will continue to do so.[1755] Another commenter argued that funds should be required to test against a more conservative threshold, such as 20%, to allow funds to manage liquidity with "an eye toward a significant buffer" against the liquidity threshold that would trigger fees and gates.[1756] Finally, one commenter, although generally supportive of testing liquidity, suggested that rather than requiring funds to test against a specific liquidity threshold, funds should analyze the impact of specific hypothetical event scenarios on weekly liquidity and the fund's NAV, even if such events fall short of triggering a specific liquidity threshold.[1757]

Several commenters, however, opposed the proposed requirement to have funds stress test their liquidity.[1758] One commenter noted that it believed that testing liquidity would not be particularly meaningful for funds, as it is not possible to predict what assets a fund would sell to meet redemptions.[1759] This commenter also believed that testing liquidity in floating NAV funds would serve no useful purpose because any losses on sales of securities to meet redemptions

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1753 *See* rule 2a-7(c)(2(ii).

1754 *See, e.g.,* BlackRock II Comment Letter; Fidelity Comment Letter; MSCI Comment Letter; Dreyfus Comment Letter (but expressing objection to the stress tests as proposed as vague, qualitative, and onerous).

1755 *See* BlackRock II Comment Letter.

1756 *See* MSCI Comment Letter.

1757 *See* Fidelity Comment Letter.

1758 *See* ICI Comment Letter; Federated II Comment Letter; Federated VIII Comment Letter; Legg Mason & Western Asset Comment Letter; Invesco Comment Letter; IDC Comment Letter.

1759 *See* Legg Mason & Western Asset Comment Letter.

would be reflected in the fund's NAV.[1760] Several commenters believed that it was not feasible for a fund to test "the magnitude of each hypothetical event that would cause" the fund to cross the liquidity threshold,[1761] as the proposed rule would have required for reporting to the board.[1762] These commenters noted that, unlike stable share price, there was not a direct relationship between a fund's liquidity levels and the hypothetical events listed in the proposed rule, other than shareholder redemptions.[1763] They believed that conducting such stress tests would therefore require funds to make complex assumptions about how hypothetical events, such as an interest rate increase, would affect the level of shareholder redemptions or a portfolio manager's decision to sell securities.[1764] As an alternative, commenters suggested that funds could calculate the level of shareholder redemptions that, if satisfied using only weekly liquid assets, would reduce the fund's weekly liquid assets to 15%.[1765] Additionally, one commenter, although not objecting to having funds stress test for liquidity maintenance generally, believed that the stress tests as

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1760 *Id.*

1761 *See* ICI Comment Letter; Federated VIII Comment Letter. *See also* IDC Comment Letter (noting that testing when a hypothetical event may impact a fund's ability to maintain weekly liquid assets of 15% may not be feasible).

1762 *See* proposed rule 2a-7(g)(7)(ii) (Floating NAV Alternative or Fees and Gates Alternative).

1763 *See* ICI Comment Letter (arguing that there is no practical means of testing when a hypothetical event, other than redemptions, would cause a money market fund to cross the 15% liquidity threshold); Federated II Comment Letter (same); Federated VIII Comment Letter (same). *See also* Invesco Comment Letter (objecting to the testing of scenarios in which a fund falls below the 15% liquidity threshold because the only reasonable scenario in which this would occur is shareholder redemptions).

1764 *See* ICI Comment Letter (noting that funds do not have a basis for determining the amount of redemptions might indirectly result from significant changes in interest rates, spreads or a downgrade or default on portfolio securities); Federated VIII Comment Letter (arguing that the proposed test on liquidity levels would have to be based on a behavioral relationship between changes in interest rates and decisions by the fund's portfolio manager to sell portfolio securities); Schwab Comment Letter (noting that testing liquidity requires estimation of data that is not directly observable, such as redemption contagion and security level price correlations).

1765 *Id.*

proposed were vague and qualitative in nature.[1766]

We continue to believe that funds should assess their liquidity as part of the stress testing process. As one commenter noted, investors are likely to monitor their funds' liquidity levels, and the deterioration of liquidity could spark redemptions.[1767] We agree. We also believe that the benefits to testing liquidity will apply to floating NAV funds as well as stable NAV funds. We believe that floating NAV funds need to understand what can place stress on liquidity, regardless of the fact that losses from the sales of securities are reflected in a market-based NAV, particularly in light of the potential for triggering a fee or gate.[1768] It is important for boards to understand and be aware of what could cause a fund's liquidity to deteriorate below certain thresholds (or below a regulatory threshold) as this renders the fund less able to satisfy redemptions through internal liquidity and thus increases the likelihood that satisfying future redemptions will generate liquidity costs.

We disagree with the commenter that indicated that testing liquidity would not be meaningful because it is not possible to predict what assets would be sold to meet redemptions.[1769] As discussed below, we have made several modifications to the proposed rule in response to comments to reduce the number and complexity of assumptions that funds will need to make. We recognize that funds still need to make certain assumptions in their stress testing. In particular, when testing the effect of an increase in shareholder redemptions, funds will have to make assumptions regarding which assets are sold to meet such redemptions. We believe,

1766 *See* Dreyfus Comment Letter.

1767 *See* MSCI Comment Letter.

1768 *See* Legg Mason & Western Asset Comment Letter.

1769 *Id.*

however, that the stress testing requirements that we are adopting today will still be helpful to a board's understanding of a fund's liquidity and the events that can make it deteriorate, even when it includes some assumptions. In support of this belief that such testing can be useful to funds, we note that some commenters indicated that they already stress test liquidity, even though it is not currently required.[1770] Additionally, as we discuss below, we believe that a disclosure and discussion of the assumptions that fund managers made when developing stress testing can increase the board's understanding of the stress testing results, and how the results might differ if different assumptions are used.

Regarding the commenters that noted that there was not a direct relationship between a fund's liquidity levels and the hypothetical events listed in the rule, we recognize that many of the hypothetical events in the rule do not have a direct effect on liquidity. We did not intend to require funds to make complex assumptions regarding how the hypothetical events listed in the proposed rule would affect redemption levels and therefore liquidity. In response to the concerns that these commenters raised, and as discussed further below, we have modified the stress testing requirements so that each hypothetical event listed in the amendments is tested assuming varying levels of shareholder redemptions. We are not requiring the fund to test, for example, how a change in interest rates or credit spreads by itself affects a fund's level of weekly liquid assets, but rather how increases in redemptions combined with the effect of specific hypothetical events, like a change in interest rates or credit spreads, may affect fund liquidity. It should also simplify the implementation of the requirement by not requiring the fund to make potentially complex or speculative assumptions about how an increase in interest rates or deterioration in portfolio credit

1770 *See* BlackRock II Comment Letter; Dreyfus Comment Letter.

quality will affect shareholder redemptions, and thereby affect liquidity, a concern that was raised by commenters.[1771] We believe this measure, in addition to modifications to the proposed hypothetical events discussed below, addresses the concern of the commenter that did not object to testing liquidity in principle but believed that the proposed hypothetical events made the stress testing requirements vague and qualitative in nature. Finally, as discussed further below, we are eliminating the proposed requirement that funds report the "magnitude of each hypothetical event" that would cause the fund to fall below the liquidity threshold. This change from the proposal responds to commenters' concerns that making such a determination is not feasible.[1772]

As noted above, we are requiring funds to test against a 10% weekly liquid assets threshold. We have chosen the 10% weekly liquid assets threshold because it is the same threshold that will trigger a default liquidity fee absent board action under the final amendments. Much like the inability to maintain a stable price, the triggering of a default fee absent board action under our fees and gates reform may result in consequences for a fund and its shareholders. Requiring funds to stress test their ability to avoid falling below this threshold should help inform boards and fund managers of the circumstances that could cause a fund to trigger a default liquidity fee and provide them a tool to help avoid doing so. We considered setting the required threshold at a more conservative level, in particular 30%, because this threshold is the level of weekly liquid assets that funds are required to maintain and the level below which fund directors will be permitted to impose a discretionary fee or gate. We believe, however, that fund directors would benefit most from understanding the events that could place

1771 *See* Federated VIII Comment Letter; ICI Comment Letter.

1772 *Id.*

such stress on a fund's liquidity that it would trigger a liquidity fee, absent board action. Although we believe funds would also benefit from testing the ability to maintain higher liquidity thresholds,[1773] we are sensitive to the potential costs of requiring funds to stress test against multiple liquidity thresholds, and have therefore chosen to set the liquidity threshold for required testing at the lower 10% threshold. Nonetheless, we encourage funds to consider testing multiple liquidity thresholds, particularly up to and including the 30% threshold, and to consider more generally the effects of hypothetical events and combinations of those events on liquidity.

b. Principal Volatility

In addition to requiring funds to test their liquidity against, at minimum, specified hypothetical events, we are requiring funds to test their ability to minimize principal volatility.[1774] Funds are currently required to test their ability to maintain a stable NAV. In the Proposing Release, we proposed replacing this requirement for floating NAV funds with a requirement to test their ability to maintain weekly liquid assets, and proposed requiring stable NAV funds to test their ability to maintain both a certain level of liquidity and a stable share price.[1775] In the Proposing Release, however, we recognized that there might be other metrics that could be used in stress testing. Specifically, we requested comment on whether to require floating NAV funds to test their ability to meet an investment objective, avoid losses or minimize principal volatility.[1776]

1773 *See* BlackRock II Comment Letter (noting that it stress tests against other weekly thresholds it deems appropriate); Fidelity Comment Letter (noting that testing the effects of events on liquidity and share price can be useful to boards even if the event "is not of sufficient magnitude to cause the MFF to violate" a threshold).

1774 *See* rule 2a-7(g)(8)(i).

1775 *See* Proposing Release, *supra* note 25, at section III.L.

1776 *See* Proposing Release, *supra* note 25, at section III.L.

In response, several commenters argued that floating NAV funds should continue to test their NAV stability.[1777] These commenters pointed out investors in floating NAV funds will continue to expect a relatively stable NAV.[1778] Additionally, commenters argued that the stress testing requirements should not differ between floating NAV and fixed NAV funds.[1779] As we noted above, two commenters did not believe that stress testing requirements should apply to floating NAV funds.[1780] One such commenter argued that testing for floating NAV funds was not necessary because a floating NAV already provides optimal price transparency.[1781]

We agree with commenters that believed floating NAV funds should test their NAV stability. We believe that money market funds, regardless of whether they have a floating NAV or maintain a stable NAV, will continue to strive to minimize principal volatility to maintain a stable share price. In times of market stress, funds could face challenges in limiting principal volatility, and we believe that funds and fund boards would benefit from stress testing to help them understand the potential pressures on principal stability, as the current requirements do today. We have therefore modified the proposed rule to require a fund to test both its ability to maintain liquidity and its ability to minimize principal volatility based on specified hypothetical events. We have determined not to set specific limitations or thresholds against which funds

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1777 *See* BlackRock II Comment Letter (noting that investors in floating NAV funds expect a relatively stable NAV); Fidelity Comment Letter (same); MSCI Comment Letter (noting that even with a floating NAV, there will still be a valuation "tipping point").

1778 *Id.*

1779 *See* BlackRock II Comment Letter; Fidelity Comment Letter.

1780 *See* Deutsche Comment Letter; Legg Mason & Western Asset Comment Letter (commenting that no stress testing should be required for Floating NAV funds, and arguing that having a floating NAV fund test for liquidity would serve no useful purpose). The argument raised in the Legg Mason & Western Asset Comment Letter is discussed above in the discussion regarding the use of liquidity as a metric in stress testing.

1781 *See* Deutsche Comment Letter.

should test principal volatility. Unlike stable NAV funds, which have a clear threshold, we do not believe that there is single measure of what level of volatility investors in floating NAV funds will tolerate. This measure might differ among floating NAV funds, depending on, for example, investor composition. Accordingly, we believe that funds and fund boards are best suited to determining the amount of principal volatility that investors in their floating NAV funds will likely tolerate and, accordingly, what volatility threshold or thresholds should be used in their stress testing.

We have chosen to use the term "minimize principal volatility" rather than "maintain a stable share price" to clarify this requirement applies regardless of whether the fund has a floating or a stable NAV, and believe that this metric is consistent with the comments submitted.[1782] We believe, based on comments, that funds would generally approach this requirement similar to how they today test the ability to maintain a stable share price although, as discussed above, funds will need to determine what volatility threshold or thresholds they believe are appropriate to test against.[1783] We have chosen to use the metric of minimizing volatility, rather than avoiding losses because certain investors in floating NAV funds might demand overall price stability, and therefore some floating NAV funds might determine that it is appropriate to consider both upward and downward price pressures when developing stress

1782 *See* BlackRock II Comment Letter (noting that it believes that investors in a floating NAV fund will expect the fund to have a "relatively stable NAV"); MSCI Comment Letter (noting that it is unlikely that investors in floating NAV funds will accept NAV fluctuations outside of a very small band, and that there will be some form of a "valuation tipping point")

1783 *See* State Street Comment Letter (noting that it currently offers stress testing to liquidity funds with a floating NAV, including the ability for a floating NAV to avoid losses greater than 25 or 50 basis points, and that these tests are "relatively simple" modifications to the stable NAV tests).

tests.[1784]

We have retained the requirement that stable NAV funds test their ability to maintain a stable share price. Although we do not anticipate that stable NAV funds would approach this additional requirement in a way that differs much, if at all, from a test to minimize principal volatility, it clarifies that stable NAV funds are required to test the ability of the fund to avoid breaking the buck.

The Commission believes that requiring funds to test against both the level of weekly liquid assets and principal volatility is appropriate. Several commenters similarly supported testing both liquidity and principal stability.[1785] Although we recognize that requiring testing against both metrics could require more tests than requiring testing against one metric, we believe that testing for both metrics justifies the additional burden of more tests. As commenters pointed out, principal stability and minimizing price volatility are two primary objectives of money market funds.[1786] Additionally, we believe that principal stability and liquidity are interrelated. In particular, we agree with a commenter that pointed out that, in times of market stress, a fund could experience (i) less price stability, resulting from a decline in liquidity or in an attempt to maintain adequate liquidity, or (ii) less liquidity, resulting from a decline in price

1784 Although we recognize that upward price pressures might be a relevant metric to stress test for some funds, we also recognize that funds will generally be more concerned with downward price pressures. Accordingly, we do not interpret the requirement to test the ability to minimize principal volatility to require funds, as a matter of course, to test against upward price movements. This is consistent with staff's clarification of the stress testing rules adopted in 2010 that funds did not have to stress test against "breaking the buck on the upside." *See* Staff Responses to Questions about Money Market Fund Reform, August 7, 2012, *available at* http://www.sec.gov/divisions/investment/guidance/mmfreform-imqa.htm.

1785 *See* BlackRock II Comment Letter; Fidelity Comment Letter; MSCI Comment Letter.

1786 *Id.*

stability or an attempt to maintain price stability.[1787] We therefore believe boards should understand the range of events that could place stress on liquidity, principal stability or both, and that stress testing both liquidity and volatility will increase such understanding.

3. Hypothetical Events Used in Stress Testing

The Commission is also adopting modifications to the hypothetical events that funds use in stress testing. As discussed further below, we have modified these events from the Proposing Release to address commenter concerns about the potential complexity of testing for some of the proposed hypothetical events, while still enhancing stress tests to incorporate correlations between securities and combinations of events. In response to commenters' concerns, we have modified the rule text to clarify the number and extent of tests that the rule requires.

As discussed above, we proposed improvements to stress testing in the Proposing Release because we believed that certain enhancements and clarifications to the hypothetical events currently used in stress testing were necessary to improve the minimum quality of the stress testing by some funds. The proposed enhancements included requiring the funds to consider factors such as correlations among securities returns and various combinations of events in their stress tests, an assessment of how a fund would meet increasing shareholder redemptions (taking into consideration assumptions regarding the liquidity and price of portfolio securities), and both parallel and non-parallel shifts in the yield curve.

Some commenters generally supported the proposed enhancements.[1788] Several

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1787 *See* Fidelity Comment Letter.

1788 *See, e.g.*, MSCI Comment Letter; TIAA-CREF Comment Letter.

commenters opposed or expressed concerns about the proposed enhancements.[1789] Specifically, some commenters argued that the enhancements would not allow funds to retain flexibility to tailor stress tests to the fund.[1790] Some commenters expressed concerns that the proposed enhancements would increase the burden, expense, and complexity of stress testing.[1791] Some commenters believed that the proposed enhancements were too vague.[1792] Commenters expressed concerns that the proposed requirements to test for combinations of events and other events made the rule unclear about what events must be tested and the extent of testing necessary to comply with the proposed requirements, with some commenters arguing that the proposed rule required potentially endless numbers of tests.[1793]

In particular, some commenters believed that the proposed enhancements would require funds to make unrealistic assessments about the liquidity and price of securities that a fund might sell to meet redemptions, and assessments about how an adverse event in one portfolio security might affect other portfolio securities. Commenters argued that these requirements might require significant assumptions that would be difficult to make and that could render the results not useful to boards.[1794]

[1789] *See, e.g.,* Dreyfus Comment Letter; ICI Comment Letter; Federated VIII Comment Letter; Schwab Comment Letter; Invesco Comment Letter.

[1790] *See* Legg Mason & Western Asset Comment Letter; Comment Letter of Waddell & Reed Investment Management Company (Sept. 17, 2013) ("Waddell & Reed Comment Letter"); SIFMA Comment Letter.

[1791] *See, e.g.,* Federated II Comment Letter; Dreyfus Comment Letter; Invesco Comment Letter; SSGA Comment Letter.

[1792] *See, e.g.,* ICI Comment Letter; Federated II Comment Letter; Federated VIII Comment Letter; Dreyfus Comment Letter; Schwab Comment Letter.

[1793] *See* Federated II Comment Letter (noting that the rule is unclear about the type and number of tests required); ICI Comment Letter (noting that the requirement to incorporate combinations of events causes the number of test results to grow geometrically with each permutation of stress events).

[1794] *See, e.g.,* Schwab Comment Letter; ICI Comment Letter; Federated VIII Comment Letter; Dreyfus Comment Letter; Invesco Comment Letter.

The Commission disagrees with commenters who argued that modifications to hypothetical events will reduce funds' flexibility in developing stress tests.[1795] First, the requirements we are adopting today still leave the specific parameters of the hypothetical events to the fund's discretion. Furthermore, the hypothetical events specified in the rule are not a comprehensive list of the hypothetical events that funds may stress test, but a minimum set. As discussed below, the rule requires a fund adviser to include additional combinations of events that the fund adviser deems relevant.

We are, however, persuaded by commenters that some of the proposed enhancements might require funds to make complex behavioral assumptions that might not be realistic and that might ultimately reduce the utility of stress testing to fund boards. We also recognize that, as proposed, some of the hypothetical events were vague and might be difficult to implement. Finally, we also are sensitive to the potential burdens that administering a large number of stress tests with complex assumptions can place on funds and their boards, a point raised by commenters. To address these concerns, and as discussed below, we have modified the proposed enhancements to specify certain minimum hypothetical events that funds are required to incorporate in their testing. We believe that the proposed requirements reflected four primary areas of risk that can place stress on funds. Those are (i) an increase in the general level of short-term interest rates, (ii) a downgrade or default of a portfolio security position, (iii) a correlated increase in the credit spreads for certain portfolio securities, and (iv) an increase in shareholder redemptions.[1796] We have therefore modified the hypothetical events that funds must

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1795 *See* Legg Mason & Western Asset Comment Letter; Waddell & Reed Comment Letter; SIFMA Comment Letter.

1796 *See* ICI Comment Letter (noting that the rule should only require tests for spreads in the yield curve; an use in stress testing so that they focus on these risks and eliminated several of the elements in the proposed rule within those areas of risk that commenters argued would require the most complex and unrealistic assumptions. As discussed further below, each fund is required to test each of the first three events in combination with increasing shareholder redemptions, which we believe will allow funds to focus on the most important combination of events that will provide the most meaningful results to boards, while reducing the number of combinations of events that the rule requires as a minimum set for stress testing.

a. Interest Rate Increases

Funds are currently required to stress test for a change in short-term interest rates. We proposed modifying this requirement so that funds would only need to test for increases in the general level of short-term interest rates, making clear that funds did not have to test for decreases in short-term interest rates. We received no comments on this aspect of the proposal, and we are adopting the modifications as proposed.[1797]

Second, we proposed to add a hypothetical event for funds to test, namely "[o]ther movements in interest rates that may affect fund portfolio securities, such as parallel and non-parallel shifts in the yield curve." Commenters expressed concerns with this requirement. First, commenters noted that testing for non-parallel shifts in the yield curve would be unlikely to yield results that are any more informative than carefully chosen parallel shifts in the yield curve, yet

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increase in the spread of non-Treasury securities over the yield curve, redemptions, and a downgrade or default of a significant issuer and/or provider of demand features and guarantees); Fidelity Comment Letter (suggesting standardized scenarios with combinations of interest rate increases, yield spread shocks across a sector of portfolio securities, a credit event of an issuer of a portfolio securities, and shareholder redemptions).

1797 *See* rule 2a-7(g)(8)(i)(A).

incorporating this factor into stress testing would require significantly more effort.[1798] Another commenter noted that this requirement was vague and open-ended, as there are an infinite number of non-parallel interest rate movements.[1799]

We are not adopting the proposed requirement to test for "[o]ther movements in interest rates that may affect fund portfolio securities, such as parallel and non-parallel shifts in the yield curve." We are persuaded by commenters' concerns that incorporating non-parallel shifts in the yield curve will require funds to expend effort determining the types of shifts to test for, with little more benefit than testing for parallel shifts in the yield curve, and that testing for parallel shifts in the yield curve is encompassed by the requirement to test for general increases in the level of short-term interest rates.[1800]

b. Credit events

Funds currently are required to test for a downgrade of or default on portfolio securities.[1801] We proposed to enhance this requirement by requiring that funds test for a "downgrade or default of portfolio securities and the effects these events could have on other securities held by the fund." As discussed in the Proposing Release, we had proposed this requirement to ensure that funds consider portfolio correlations when stress testing. Commenters expressed concerns about the proposed enhancement, arguing that the requirement was vague and qualitative in nature because the fund would have to make assumptions about the event that led to the downgrade or default, resulting in stress testing results that might not be meaningful to

1798 *See* ICI Comment Letter; Fidelity Comment Letter.

1799 *See* ICI Comment Letter.

1800 *See* ICI Comment Letter (noting that a test for a parallel increase in the Treasury yield curve corresponds to test for general increases in short-term interest rates).

1801 *See* current rule 2a-7(c)(10)(v).

its board.[1802] We were persuaded by commenters of the potentially speculative nature of the proposed requirement and that, as a result, the proposed requirement might not provide meaningful information to boards about the correlation of portfolio securities, which was the intent of the proposed requirement. We have therefore determined not to require funds to incorporate in their testing the effect of a downgrade or default of one security on the price of other securities in the portfolio. We also believe that eliminating this proposed requirement will reduce the burden of the stress testing requirements relative to the proposed requirements.[1803]

After reviewing the comments, we have modified the requirement from what was proposed. Specifically, we are requiring that funds test for "a downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security)...." The current rule requires, and the proposed rule would have continued to require, that funds stress test for the downgrade or default on more than one portfolio security (*i.e.,* they are required to test for a downgrade or default of portfolio *securities*). Commenters suggested that the rule could require funds to stress test a particular portfolio security, such as the most significant individual credit risk to the fund, measured by the size of the holding, the likelihood of default or both,[1804] or the "median" portfolio security.[1805]

1802 *See, e.g.,* Dreyfus Comment Letter; *see also* ICI Comment Letter (noting that a stress test can assume a downgrade or default without making any assumptions about what caused it, but cannot assess what other portfolio securities might be correlated to the downgrade or default without some basis for assuming the adverse event that led to the downgrade or default).

1803 *See* ICI Comment Letter (noting the time and cost that would need to be incurred in developing highly sophisticated stress tests that the commenter believed would be required to incorporate this requirement).

1804 *Id.*

1805 *See* Fidelity Comment Letter.

Rather than have the rule define which securities in the portfolio to test, we believe that it is appropriate for the adviser to make a determination of which security positions, representing different portions of the portfolio, would be most informative to the board to test for a downgrade or default of an issuer. We believe the most appropriate security to test for a hypothetical default will vary among funds depending on several factors, including the composition of the fund's portfolio and contemporaneous market events. The fund could determine that it should test a security that represents the single biggest credit risk in the portfolio and a security that represents a "median" exposure, like commenters suggested, or it could include securities representing different levels of exposure.

Although the rule we are adopting gives funds general discretion when making the determination of which securities to test, we do believe it is appropriate to require funds to select particular security positions representing varying, *i.e.,* different, portions of the portfolio when making such determinations, so that the fund's adviser and its board can better compare the differing results to the fund depending on the security that is tested. Tests of the hypothetical downgrade or default of a portfolio security representing the largest credit risk to the fund and of a portfolio security representing a median exposure, for example, allows a board to see how the results from these stress tests differ, and therefore better understand that a downgrade or default of different securities will have different impacts on the fund.

Finally, although we are not requiring funds to assume that any particular event is causing the hypothetical downgrade or default, funds may want to consider incorporating in this stress test, as appropriate, a deterioration in the credit quality of a guarantor (or provider of demand features) of portfolio securities, as suggested by one commenter.[1806] This type of scenario might be particularly relevant for funds in which a single entity is a guarantor or provider of a demand feature for a high concentration of portfolio securities.

After reviewing the comments, the Commission is also modifying the rule to require that funds make varying assumptions about the resulting loss in the value of the security when testing for a downgrade or default of a portfolio security. The Commission notes that a downgrade or default of a portfolio security does not always have a uniform effect on the price of a security. In some cases, the downgrade or default could cause almost a complete loss on that portfolio security.[1807] In other cases, the loss on the security might be less, potentially even substantially less.[1808]

As with the size of the portfolio position of an issuer that has a downgrade or default, the impact on a fund of a downgrade or default of a portfolio security may vary substantially depending on the size of the loss that the downgrade or default causes.[1809] Accordingly, we believe that it is appropriate to require stress testing to include varying assumptions on the amount of loss on a security as a result of a downgrade or default so that boards better

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1806 *See* ICI Comment Letter (arguing that funds should be required to stress test a "downgrade or default of a significant issuer and/or provider of demand feature and guarantees).

1807 For example, according to filings submitted to us pursuant to temporary rule 30b1-6T, money market funds' holdings of securities issued by Lehman Brothers Holdings Inc. or its affiliates were typically valued at approximately 17% of their amortized cost value in 2009.

1808 For example, according to filings submitted to us pursuant to temporary rule 30b1-6T, money market funds' holdings of securities issued by structured investment vehicle were typically valued at approximately 50% of their amortized cost value in 2009.

1809 A comparison of commenters' discussion of stress testing a downgrade or default of a portfolio security illustrates that the effect of a downgrade or default can differ substantially, and thereby have substantially different effects on the fund. *Compare* Dreyfus Comment Letter ("We also know that a single default of a 1% position…in a MMF can break the buck.") *with* Fidelity Comment Letter (showing the results of stress testing the effect on a hypothetical fund of a credit event resulting in a 10% loss on the portfolio security, which does not cause the hypothetical fund's NAV per share to drop below $0.9950).

understand how the amount of loss of a portfolio security will affect the fund overall.[1810] It can also help boards understand when pricing pressures on certain securities are unlikely to have a significant impact on the fund. For example, during the debt ceiling impasse of 2013, staff observed through discussions with fund advisers that although yields on certain Treasury bills increased and some funds holding these Treasury bills experienced some increase in redemptions, there was very little effect on the shadow price of Treasury or government money market funds. Stress testing can illustrate these effects.

c. Credit spread increase in portfolio sectors

We proposed requiring that funds test for the "widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied" in order to require funds to test for changes in spreads that may affect specific asset classes. One commenter supported the proposed requirement, noting that testing for asset class spreads can provide information about a fund's exposure to investor flights that have occurred in the past, such as in asset-backed commercial paper and European financials.[1811] One commenter suggested that funds be required to test for a change in spreads by testing for a parallel increase in the spread of non-Treasury securities over the Treasury yield curve, assuming a perfect correlation in the price movement, regardless of issuer or maturity, which would show the board the "worst case scenario" for yield spread changes.[1812] Another commenter suggested that a test for changes in yield spreads that

1810 As with the requirement that funds test for a downgrade or default of particular portfolio security positions representing various portions of the fund's portfolio, we believe it is efficient for funds to make the determination of the appropriate magnitudes of loss to incorporate in stress testing, as that decision will vary depending on several factors, including, for example, historical information on losses on similar securities following a downgrade or default.

1811 *See* MSCI Comment Letter.

1812 *See* ICI Comment Letter.

would require the fund to test for a yield spread shift in a "typical portfolio sector," which it described as a sector (*i.e.*, a logically related subset of holdings) representing the median exposure in the portfolio among all defined sectors.[1813] This commenter also noted that its suggested approach would incorporate into stress testing a test for correlated price movements among portfolio securities.

In response to these comments, we are modifying the proposed requirement to require funds to test for "a widening of spreads compared to the indexes to which portfolio securities are tied in various sectors of a fund portfolio (in which a 'sector' is a logically related subset of portfolio securities, such as securities of issuers in similar or related industries or geographic region, or securities of a similar security type)."[1814] As discussed above and in the Proposing Release, the Commission believes that it is important for funds to stress test for potential correlations in the price movements of related securities. That is because an event that affects the price of one security may also affect the prices of securities of similarly situated issuers or asset classes. We believe, as one commenter suggested, that testing for a correlated shift in the yield spread among logically related securities (*i.e.*, sectors) will illustrate the impact on funds of a concurrent price shift among portfolio securities representing, for example, a similar industry, similar geographic region, or security type.[1815] We understand that some money market funds today use such assumed sectors in their stress testing.

1813 *See* Fidelity Comment Letter.

1814 *See* rule 2a-7(g)(8)(i)(C).

1815 *See* Fidelity Comment Letter (suggesting that the stress testing requirements include standardized yield shift spreads of a logically related subset of holdings); MSCI Comment Letter (supporting stress testing requirements that focus on, among other things, stresses on spreads in asset classes, such as asset-backed commercial paper or European financials).

To implement this requirement, funds should generally group securities into logically related categories, or sectors, such as securities of a similar industry, similar geographic region or security type (such as asset-backed commercial paper or variable rate demand notes), and then test for the impact of yield spread changes on various sectors. For example, a fund with concentrations of securities in a particular geographic region, such as Europe, could test a correlated spread shift among those securities, and perhaps even test a correlated shift of securities from a single country or group of countries that are experiencing or have experienced stress, such as during the 2011 Eurozone debt crisis. We also believe that it could be helpful to boards to include in the required report, discussed below, a summary of the sector composition and the concentration of that sector within the portfolio as part of the assessment of stress testing.

We are not further specifying how funds should define sectors or which sectors funds should test for a yield spread change, such as requiring funds to test a "typical" or "median" sector, as suggested by one commenter.[1816] We believe that such determinations are appropriate to leave to the fund's discretion because such determinations will vary among funds depending on several factors, including the composition of the fund's portfolio and contemporaneous market events. We are not adopting the suggestion of one commenter that funds test for a perfect correlation of spreads in all non-Treasury securities to show funds the "worst case scenario" of a spread shift.[1817] This suggested test would not provide information about potential correlations among similarly situated securities. For example, the suggested test would not provide any information about how an adverse event in a particular industry in which the fund held portfolio

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1816 *See* Fidelity Comment Letter.

1817 *See* ICI Comment Letter.

securities might affect the fund. We believe that testing a spread of different sectors of a portfolio, will help the board better understand the composition of the fund portfolio and potential correlations among portfolio securities.

Additionally, in the Proposing Release, we proposed to require funds to test for combinations of events that the adviser deemed relevant, "assuming a positive correlation of risk factors...and taking into consideration the extent to which portfolio securities are correlated such that adverse events affecting a given security are likely to also affect one or more other securities (*e.g.,* a consideration of whether issuers in the same or related industries or geographic regions would be affected by adverse events affecting issuers in the same industry or geographic region)." This proposed requirement was intended to have stress testing include an evaluation of the effect that hypothetical events on issuers that operate in a similar industry, are based in a similar geographic region, or have other related attributes. Commenters expressed concerns about this proposed requirement, arguing that it would be difficult to implement because it required complex or speculative assumptions about the effects of adverse events.[1818]

We believe that the requirement that we are adopting of an assumed correlated yield shift in specific sectors of portfolio securities provides funds and boards information about the effect of correlated price movements among similar securities in a simpler and less burdensome way than the proposed requirement of taking into consideration correlations among securities. Because the requirement allows funds to assume a perfectly correlated change in spreads among similarly situated securities, funds will not be required to make assumptions about how adverse events affect prices of these securities. Accordingly, although we are requiring some

[1818] *See* ICI Comment Letter; Federated VIII Comment Letter.

combinations of events, as discussed below, we are not adopting the requirement that fund advisers "assum[e] a positive correlation of risk factors…and "tak[e] into consideration the extent to which the fund's portfolio securities are correlated…." when considering whether to test for additional events.

d. Shareholder redemptions

The fourth hypothetical event identified by the Commission and commenters that is important to include in stress testing is shareholder redemption levels. As noted above, however, rather than requiring funds to consider shareholder redemptions in isolation, as is currently required and would have been required under the proposed rule, we are requiring that funds test for various levels of shareholder redemptions in combination with each of the three other required hypothetical events, *i.e.,* an increase in interest rates, a downgrade or default of various portfolio securities, and a yield spread change in various sectors of portfolio securities.

As discussed in the Proposing Release, the Commission believes that testing for combinations of events can help funds better understand risks to the fund, and therefore included in the proposed rule a requirement that the fund test for combinations of events that the adviser deems relevant. Although the Commission did not include in the proposed rule any specific combinations of events, the Commission requested comment on whether specific combinations of events should be required in the rule, noting in particular the possibility of combining an increase in shareholder redemptions with an increase in interest rates or a downgrade of a portfolio security.[1819]

Generally, redemptions, by themselves, are unlikely to create stress on a fund as long as

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[1819] *See* Proposing Release, *supra* note 25, at section III.L.

the market for the fund's portfolio securities is liquid and interest rates remain unchanged.[1820] Similarly, an increase in interest rates, if no shareholders redeem from the fund until the securities affected by the interest rate shift mature, should have no price impact on the fund.[1821] It is the combination of events—and particularly an interest rate or credit event combined with redemptions—that most typically can create fund stress.[1822] We also believe combinations of events are more likely to be realistic scenarios than market events or increases in redemptions in isolation (*e.g.,* it is reasonable to expect that a money market fund that experiences a significant credit event may also experience a subsequent increase in redemptions).[1823] We are not including in the rule the redemption levels that funds must include in stress testing.[1824] We believe that the appropriate level of redemptions to test will vary among funds, and will depend, for example, on the composition of funds' investor bases and shareholder redemption preferences, as well as historical redemption activity in the fund.

We also proposed to require that funds incorporate in stress testing an assessment of how

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1820 Prices of fixed income securities typically remain stable if interest rates do not change. Thus, shareholder redemptions that require funds to sell securities should have no effect on funds' NAVs as long as interest rates have not changed. We note that redemptions from a stable value money market fund have no impact on the fund's market-based NAV per share as long as the NAV per share is $1.00.

1821 Prices of fixed income securities typically fall when interest rates rise. Thus funds that must sell fixed income securities before maturity are likely to realize capital losses if interest rates have risen. If instead funds hold securities to maturity, they receive securities' par value and should realize no losses. Thus, interest rates increases that are not accompanied by securities sales to meet redemption requests should not cause funds to incur capital losses.

1822 *See* Fidelity Comment Letter (illustrating the effect on liquidity and NAV on increasing shareholder redemptions in combination with each of an (i) interest rate increase, (ii) a credit event, and (iii) a spread shift).

1823 *See* State Street Comment Letter (noting that stress testing combinations of events is important because stress events do not typically happen in isolation, and suggesting the Commission consider the combination of shareholder redemptions in combination with increases in interest rates, a downgrade or default, and credit spreads).

1824 *See* Fidelity Comment Letter (suggesting standard scenarios including redemption levels of 0%, 25%, and 50%).

a fund would meet redemptions, taking into consideration factors such as the liquidity and pricing of the fund's portfolio securities. One commenter supported this proposed requirement, but noted that liquidity data regarding fund portfolio securities transactions was scarce.[1825] Other commenters expressed concerns that this requirement was vague and qualitative, and would require detailed and sophisticated assumptions.[1826] We were persuaded by commenters' concerns that the proposed requirement could require complex assumptions to implement for which data might not be readily available, particularly the requirement that the fund take into account the liquidity and pricing of the fund's portfolio securities. We have therefore not adopted this requirement to simplify, and thereby reduce the potential burden of, the stress testing requirements relative to the proposal.

We note, however, that funds need to make some basic assumptions about how a fund obtains cash for redemptions to satisfy the new stress testing requirements relating to the fund's level of weekly liquid assets. In doing so, a fund could use a variety of assumptions. For example, some commenters suggested that funds assume that all redemptions are satisfied first using weekly liquid assets.[1827] This assumption would provide conservative stress test results given that it would have the most dramatic effect on a fund's level of weekly liquid assets. On the other hand, some funds may prefer to assume in their stress tests other methods of meeting shareholder redemptions (or may prefer to show how the stress tests results would differ if this assumption were varied). For example, a fund might assume that redemptions are met with a

1825 *See* MSCI Comment Letter.

1826 *See, e.g.*, ICI Comment Letter (expressing concerns about how to fulfill this requirement); Dreyfus Comment Letter (same).

1827 *See* ICI Comment Letter; Federated VIII Comment Letter.

combination of weekly liquid assets and sales of portfolio securities.[1828] The rule does not specify what assumptions the fund must make, leaving that to the discretion of fund advisers because we believe the determination of which assumptions are most appropriate will vary among funds, depending on, for example, how funds have satisfied redemptions historically, and the composition of the fund's portfolio. The rule requires, however, that the fund's adviser include a summary of the significant assumptions made when performing the stress test. For example, such assumptions may include how redemptions are satisfied and the size of any "haircut" that the fund assumed in the sale of portfolio securities in order to meet redemptions.

e. Other combinations of events

The proposed rule would have required funds to test for "combinations of these and any other events that the adviser deems relevant…"[1829] We have made clarifying edits to the rule we are adopting today in response to some commenters who expressed concerns that the proposed rule was open-ended and could be read to require that funds test for combinations of every event listed in the rule.[1830] Specifically, we are requiring funds to test for "[a]ny additional combinations of events that the adviser deems relevant." We believe that the modified language

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1828 *See* Fidelity Letter (illustrating a stress test that includes the assumption that sales of non-liquid assets to meet redemptions incur a cost); MSCI Comment Letter (noting that to the extent that a redemption scenario would require the fund to sell securities, then the fund should make some assumption regarding a liquidity haircut, but that only simple assumptions can be reasonably expected).

1829 *See* proposed rule 2a-7(g)(7)(i)(F) (Floating NAV Alternative or Fees and Gates Alternative). The full proposed requirement was "Combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors (*e.g.*, assuming that a security default likely will be followed by increased redemptions) and taking into consideration the extent to which the fund's portfolio securities are correlated such that adverse events affecting a given security are likely to also affect one or more other securities (*e.g.*, a consideration of whether issuers in the same or related industries or geographic regions would be affected by adverse events affecting issuers in the same industry or geographic region)." We discuss above why we are not adopting the proposed requirement that follows the clause "Combinations of these any other events the adviser deems relevant."

1830 *See* ICI Comment Letter; Federated VIII Comment Letter.

clarifies that the fund is only required to test for additional combinations as the fund adviser deems relevant, not for combinations of every permutation of the events listed in the rule.

The rule requires that fund advisers test for combinations of events that they deem relevant. Although a fund adviser might determine that the three combinations of events included in the rule are sufficient, there might be circumstances when a fund adviser believes it is necessary to incorporate additional scenarios. For example, a fund adviser might believe that it would be relevant for the board to understand the effect of a yield spread increase in a sector, in combination with a downgrade of a portfolio security in that sector, particularly if that sector, or an issuer within that sector, has historically experienced stress.

One commenter also argued that the requirement could be interpreted to mean that all special risk assessments take the form of stress tests.[1831] This is not a requirement of the rule. We agree with the commenters that stress tests are not the only method to communicate fund risks to the board and that not every risk can be incorporated into a stress test.[1832] The rule does not require the adviser to develop a stress test for every risk the fund faces, but requires the adviser to consider whether stress testing for combinations of events not explicitly listed in the rule might be relevant to the fund's board. We believe stress testing should be used to help the board understand the principal risks of the particular fund and the risks that reasonably foreseeable stress events may place on the fund.

4. *Board Reporting Requirements*

Funds are currently required to provide the board with a report of the results of stress

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1831 *See* Federated VIII Comment Letter.

1832 *See* ICI Comment Letter; Federated VIII Comment Letter.

testing, which must include the dates of testing, the magnitude of each hypothetical event that would cause a fund to "break the buck," and an assessment of the fund's ability to withstand events that are reasonably likely to occur within the following year. We proposed modifications to these reporting requirements. First, we proposed adding a requirement that the fund report to the board the magnitude of each hypothetical event that would cause the fund to have invested less than 15% of its total assets in weekly liquid assets. Second, we proposed requiring funds to include in their assessment "such information as may reasonably be necessary for the board of directors to evaluate the stress testing...and the results of the testing."

We are adopting modifications to the proposed reporting requirements to boards regarding stress testing in response to comments we received on the proposal. Specifically, we are adopting a requirement that the board of directors be provided at its next annual meeting, or sooner if appropriate, a report that includes the dates on which the testing was performed and an assessment of the fund's ability to maintain at least 10% in weekly liquid assets and to limit principal volatility.[1833] As discussed above, some commenters had concerns that the proposed requirement that funds report to the board the magnitude of each hypothetical event that would cause the fund to have invested less than 15% in weekly liquid assets was not feasible.[1834] We believe that requiring funds to provide an assessment of the fund's ability to maintain liquidity, rather than requiring the funds report a specific value for each hypothetical event, addresses such concerns. We have also added the requirement for an assessment of the fund's ability to minimize principal volatility because, as discussed above, we have added this metric to the stress

1833 *See* rule 2a-7(g)(8)(ii).

1834 *See, e.g.*, ICI Comment Letter; Federated II Comment Letter; Federated VIII Comment Letter.

testing requirements in response to comments. We believe that requiring funds to provide an assessment of their ability to maintain liquidity and minimize principal volatility (and in the case of stable NAV funds, to maintain a stable share price), rather than the more prescriptive requirements proposed and that are in the rule currently, is also appropriate because we have modified the rule so that each "hypothetical event" is a combination of two events. We want to clarify that funds are not required to separately test for interest rate increases, a downgrade or default, a spread shift, or shareholder redemptions in isolation.[1835]

We understand that under the current requirements, many funds, in addition to reporting the magnitude of each event that would cause the fund to "break the buck," provide a table showing how the fund's shadow NAV is affected by different combinations of events and different values. Some funds include information regarding, for example, the concentrations of several of the funds' largest portfolio holdings, both by individual issuer and by sector, and of historical redemptions rates, as points of reference. Several funds also include narratives to help explain the results. In some instances, for example, fund advisers used the narrative to compare results among funds or to explain results that they considered to be unusual. Some narratives also assessed the likelihood of the hypothetical events. We are not including requirements for any of these specific items in the rule because we recognize that there is no one set of factors that will be relevant for all funds, but we believe these are examples of items that we encourage fund advisers to consider when developing the required report assessing stress test results.

We are adopting as proposed the requirement that a fund's adviser provide "such

[1835] *See* ICI Comment Letter (noting that the stress testing requirements adopted in 2010, by requiring funds to report the "magnitude of each hypothetical event" that would cause a fund to "break the buck," required funds to perform and report stress tests of each event in isolation, and noting that changing this requirement would make it easier for boards to include combinations tests in the fund's procedures).

information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing." One commenter supported this requirement, noting that it is a common practice to provide directors with information that helps to place stress-testing results in context.[1836] Some commenters opposed this requirement, arguing that the provision of additional information could be burdensome for boards and would not provide useful information to fund boards.[1837] We disagree. As we noted in the Proposing Release, the staff's examination of stress testing reports revealed disparities in the quality of information regarding stress testing provided to fund boards. We believe that this requirement will allow boards of directors to receive information that is useful for understanding and interpreting stress testing results. We note that this requirement does not require a fund adviser to provide the details and supporting information for every stress test that the fund administered. To the contrary, a thoughtful summary of stress testing results with sufficient context for understanding the results may be preferable to providing details of every test. For example, information about historical redemption activities, as mentioned above, and the fund's investor base could help boards evaluate the potential for shareholder redemptions at the levels that are being tested. Additionally, information regarding any contemporaneous market stresses to particular portfolio sectors could be helpful to a board's consideration of stress testing results.

Finally, after considering comments regarding the assumptions that funds will need to make in administering stress tests,[1838] the Commission has added a requirement that the adviser

1836 *See* ICI Comment Letter.

1837 *See* Dreyfus Comment Letter; SIFMA Comment Letter.

1838 *See, e.g.,* Fidelity Comment Letter (including in its suggested stress testing an assumption regarding the size of the loss on the sales of securities to meet redemption and the size of the loss on a portfolio security when testing a hypothetical credit event); ICI Comment Letter (suggesting funds use an assumption that include in the report a summary of the significant assumptions made when performing the stress tests. As discussed above, we have, in response to comments, modified the required hypothetical events from the proposal to reduce the number and complexity of the assumptions funds are required to make. We recognize, however, that funds will need to make some basic assumptions when conducting the stress tests. These assumptions would include, for example, how the fund would satisfy shareholder redemptions (*e.g.,* through weekly liquid assets or by selling certain portfolio securities, including any assumption of haircuts such securities can be sold at) and the amount of loss in value of a downgraded or defaulted portfolio security. We believe that having a summary of such assumptions will help the board better understand the stress testing results, and particularly the sensitivity of those results to given assumptions. We believe this information will allow the board to better understand money market fund risk exposures, and thus allow it to provide more effective oversight of the fund and its adviser.

5. Dodd-Frank Mandated Stress Testing

In the Proposing Release, we requested comment on certain aspects of money market fund stress testing as it relates to our obligation under section 165(i)(2) of the Dodd-Frank Act to specify certain stress testing requirements for nonbank financial companies that have total consolidated assets of more than $10 billion and are regulated by a primary federal financial regulatory agency.[1839] Under this section of the Dodd-Frank Act, among other matters, we must establish methodologies for the conduct of stress tests that shall provide for at least three

redemptions are satisfied using weekly liquid assets).

1839 For a definition of "nonbank financial companies" for these purposes, see Definition of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company, Board of Governors of the Federal Reserve System, [78 FR 20756 (April 5, 2013)].

different sets of conditions, including baseline, adverse, and severely adverse.[1840] Two commenters responded, noting that they did not believe that the scenarios currently published by the Federal Reserve Board for stress testing under Dodd-Frank Act Section 165(i) would be an effective means of stress testing for money market funds, because the Federal Reserve's scenarios are focused on long-term horizons, which do not have a direct causal link to foreseeable changes in money market funds.[1841] Another commenter, however, expressed some support for incorporating macroeconomic factors in money market fund stress tests.[1842] One commenter made recommendations regarding the stress testing scenarios required under section 165(i), including scenarios involving the four hypothetical events in the stress testing rule amendments we are adopting today, and stated that its recommendations would be an effective means to evaluate risk in a money market fund portfolio.[1843]

As discussed in the Proposing Release, we intend to engage in a separate rulemaking to implement the requirements of Section 165(i) of the Dodd-Frank Act, including determining appropriate baseline, adverse, and severely adverse scenarios for money market

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[1840] Under this section of the Dodd-Frank Act, we also must define the term "stress test" for purposes of that section, establish the form and content of the report to the Federal Reserve Board and the Commission regarding such stress testing, and require companies subject to this requirement to publish a summary of the results of the required stress tests. We note that under this section of the Dodd-Frank Act, we must design stress testing not just for certain money market funds, but also other types of funds and investment advisers that we regulate and that meet the $10 billion total consolidated assets test.

[1841] *See* Fidelity Comment Letter (noting that the Federal Reserve scenarios have at best an indirect causal link to changes in a money market fund); MSCI Comment Letter (noting that the horizon for the Federal Reserve's stress scenarios is between one and two years, while the scenarios that are of concern to money market funds are short-term, such as valuation shocks and rapid shareholder redemptions).

[1842] *See* Santoro Comment Letter (noting that stress testing should align with existing stress testing methodologies, and specifically macro market stress scenarios).

[1843] Fidelity Comment Letter (noting that the standardized scenario that it proposed could serve as the "severely adverse" conditions required by Section 165(i)(2)(C)(2) of the Dodd-Frank Act).

funds and other funds and advisers with more than $10 billion in consolidated assets.[1844] In proposing such stress testing for money market funds subject to these requirements, we expect to consider the efficiencies that funds subject to these additional requirements will achieve if the scenarios broadly are built off of the parameters set forth today.

6. Economic Analysis

Our baseline for the economic analysis we discuss below is the current stress testing requirements for money market funds. The costs and benefits, and effects on competition, efficiency, and capital formation are measured in increments over the current stress testing requirement baseline. The benefits, as well as the costs, of the stress test requirements will depend in part on the extent to which funds already engage in stress tests that are similar to the requirements. For example, although we are now requiring funds to test for increases in the general level of short-term interest rates in combination with various levels of an increase in shareholder redemptions, we understand that many funds already tested for increases in interest rates in combination with shareholder redemptions.

The additional information generated from the amendments to the stress testing requirements should provide several qualitative benefits to funds. Specifically, they should help fund managers, advisers, and boards monitor, evaluate, and manage fund risk, and thus better protect the fund and its investors from the adverse consequences that may result from falling below the 10% weekly liquid assets threshold or failing to minimize principal volatility (or, in the case of stable NAV funds, a stable share price). The magnitude of these qualitative benefits are not easily quantified and will vary from fund to fund based on the extent to which funds are

[1844] Proposing Release, *supra* note 25, at section III.L.

already voluntarily conducting stress testing that meet the new requirements, as well as the investor base and portfolios of each fund. We received no comments regarding how to quantify such benefits.

In the Proposing Release, we stated that because funds are currently required to meet a stress testing requirement, we did not anticipate significant additional costs to funds under the proposed rule. Several commenters responded that they expected to incur increased costs as a result of the changes.[1845] One commenter noted that it believed a majority of funds will need to change their stress testing procedures to some degree, specifically with respect to stress testing liquidity levels.[1846] One commenter provided a quantitative estimate for some of the proposed changes, estimating that required software changes to implement two of the proposed requirements, not including costs to load data, run the tests, and analyze the results, would range from $250,000 to $750,000.[1847] We note, however, that the estimate was based on an evaluation of two of the hypothetical stress tests that we proposed, one of which the Commission has determined not to adopt and the other which the Commission has modified and simplified substantially.

We stated in the Proposing Release that we expected funds would use similar

1845 *See, e.g.,* SSGA Comment Letter (generally supporting stress testing by funds, but asking the Commission to consider the benefits of the enhancements against the "substantial increase in costs" associated with the proposed changes); State Street Comment Letter (noting that there will be both a development cost and on-going operational costs); Schwab Comment Letter (noting that the proposal is costly); TIAA-CREF Comment Letter (supporting the proposed requirement and acknowledging that they would require operational changes that would require time and resources to implement).

1846 *See* State Street Comment Letter.

1847 Federated VIII Comment Letter (noting that it contacted a third-party service provider regarding the costs of implementing proposed rule 2a-7(g)(7)(i)(E), concerning testing for parallel and non-parallel shifts in the yield curve, and rule 2a-7(g)(7)(i)(F), concerning testing for "combinations of these and any other events that the adviser deems relevant, assuming a positive correlation of risk factors…and taking into consideration the extent to which the fund's portfolio securities are correlated…").

hypothetical events when testing their ability to avoid falling below a liquidity threshold to those events they use when stress testing their ability to maintain a stable price. We also understand many funds already test for their ability to avoid falling below a 15% weekly liquid asset threshold as part of their current stress tests. One commenter noted that it already tests against the 15% liquidity threshold and other liquidity thresholds, and one commenter stated generally that it already tests for liquidity maintenance, and neither commenter discussed the costs of including liquidity metric in stress testing.[1848] Two commenters indicated that requiring funds to add this liquidity metric to the stress testing requirements would impose new costs, but did not provide quantitative estimates of the costs of adding a liquidity metric to the stress testing requirements.[1849] One commenter, which provides stress testing services to funds, noted that it currently provides liquidity-related stress tests, but it did not currently provide a stress test that tests a fund's ability to avoid falling below a 15% liquidity asset threshold.[1850]

After reviewing the comments, we believe that the amendments to the stress testing requirements will impose some development and ongoing costs to funds, particularly the requirement to test against a liquidity threshold. We believe that the costs will be lower for funds that already include liquidity and combinations of events as part of their stress testing, as some funds do. We understand from commenters, however, that even funds that currently incorporate liquidity metric in their stress testing might need to modify their procedures to test

[1848] *See* BlackRock Comment Letter; Dreyfus Comment Letter.

[1849] *See* Federated VIII Comment Letter; State Street Comment Letter (noting that the new requirement would imposed both a development cost and on-going operational costs).

[1850] *See* State Street Comment Letter. *See also* Federated VIII Comment Letter (noting that it contacted a service provider of a risk management system, who indicated that the provider's system could not test for an ability to maintain weekly liquid assets at or above 15% of its total assets).

against the 10% threshold.[1851] We also recognize that funds, which currently are required to test their ability to maintain a stable share price, will now be required to test the ability to minimize principal volatility. We believe, based on our review of comments, that the costs of modifying stress testing from the metric of maintaining a stable share price to the metric of minimizing principal volatility will not be substantial.[1852] We recognize, however, that funds might incur some costs in analyzing and determining the appropriate level of volatility against which to test.

Additionally, we believe there will be costs associated with stress testing the effect of the hypothetical events that we are adopting. The extent of those costs will depend upon the extent to which a fund currently tests for the requirements or would need to modify their stress testing procedures and systems to add such tests. We understand that many funds already test for events such as interest rate increases and credit events in combination with hypothetical increases in shareholder redemptions. We also note that we have determined not to adopt several of the hypothetical events that commenters indicated would require the most estimation or modeling.[1853] Finally, as the rule requires that a fund test for "any additional combinations of events that the adviser deems relevant," a fund might incur periodic costs for making such an assessment and, if necessary, incorporating such additional tests in its stress testing.

In the Paperwork Reduction Act analysis in section IV.A.5 below, we identified certain initial and ongoing hour burdens and associated time costs related to the collection of

1851 *See* State Street Comment Letter (noting that it currently provides a range of liquidity related stress tests).

1852 *See* State Street Comment Letter (noting that it currently provides stress testing services to floating NAV liquidity funds that include testing a fund's ability to avoid losses of greater than 25 or 50 basis points, and that this would entail "relatively simple modifications," with no associated development costs).

1853 *See, e.g.,* Fidelity Comment Letter (noting that the proposed requirement to test for non-parallel shifts in the yield curve would require significantly more effort and analysis than testing for non-parallel shifts with little benefit); ICI Comment Letter (noting that the proposed requirement to include assumptions as to how the fund would sell portfolio securities to meet redemptions were sophisticated and complex assumptions).

information requirements for our stress testing amendments. As we discuss there in more detail, our staff estimates that the amendments to stress testing associated with the requirement that money market funds maintain a written copy of their stress testing procedures, and any modifications thereto, and preserve for a period of not less than six years following the replacement of such procedures with new procedures, the first two years in an easily accessible place, would involve 51,428 burden hours, at an average one-time cost of $24.52 million for all money market funds. In addition, our staff estimates that the amendments to stress testing associated with the requirement that money market funds have written procedures that provide for a report of the stress testing results to be presented to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results) would create a total annual burden for all money market funds of an additional 25,155 burden hours at a total time cost of approximately $7.28 million.

We believe the new costs for stress testing will be so small as compared to the fund's overall operating expenses that any effect on competition would be insignificant. Although some commenters believed the proposed requirements would impose new costs, commenters did not indicate that such costs would have competitive effects. The new stress testing requirements may increase allocative efficiency if the information it provides to the fund adviser, and board of directors improves the fund adviser's ability to manage the fund's risk and the board's oversight of fund risk management. Some money market fund investors also may view the enhanced stress testing requirements positively, which could marginally increase those investors' demand for money market funds and correspondingly the level of the funds' investment in the short-term financing markets. This in turn positively affects capital formation. We do not have the information necessary to provide a reasonable estimate of the effects the amendments might have on capital formation, because we do not know to what extent these changes would result in increases or decreases in investments in money market funds or in money market funds' allocation of investments among different types of short-term debt securities. No commenters provided such information or discussed the potential effects of the proposed stress testing rule on efficiency or capital formation.

K. Certain Macroeconomic Consequences of the New Amendments

In this section, as well as in sections III.A and III.B above, we analyze the macroeconomic consequences of the primary reform amendments that require fees and gates for all non-government funds and an additional floating NAV requirement for institutional prime funds. We also examine, in conjunction with analyses in these preceding sections, the effects that the amendments may have on efficiency, competition, and capital formation and discuss the potential implications of the changes for money market fund investors, funds, and the short-term financing markets. We note that we presented extensive economic analyses of the specific benefits and costs associated with the amended rules in sections III.A.5 and III.B.8 above, as well as examined commenters' specific evaluations of the proposed fees and gates and floating NAV requirements. As such, we focus here on the specific macroeconomic effects of the reforms on current money market funds and the impact of the reforms on efficiency, competition, and capital formation. It is important to note that although a large number of commenters supported our proposed fees and gates requirement for non-government funds,[1854]

1854 *See, e.g.,* Form Letter Type A [1], Type C [2], and Type D [2]; Page Comment Letter; Federated V Comment Letter; J.P. Morgan Comment Letter; TIAA-CREF Comment Letter; ICI Comment Letter; Reich & Tang Comment Letter; Northern Trust Comment Letter.

and some commenters supported our floating NAV requirement for institutional prime funds,[1855] many commenters opposed the combination of alternatives.[1856] The baseline for these analyses (and all of our economic analysis in this Release) is money market fund investment and the short-term financing markets as they exist today.

In earlier sections we discussed the specific benefits and costs associated with other reforms adopted today, including the amended rules that increase portfolio and guarantor diversification, enhance disclosure, and mandate stress testing. We discuss in these sections the macroeconomic effects of the amendments, as well as their effects on efficiency, competition, and capital formation. The specific operational costs of implementing the reforms are discussed in each respective section.

We note that the reforms adopted today will affect the economy in a number of ways, many of which are difficult, if not impossible to quantify. The effect of the reforms will depend on investors' choices among many investment alternatives, funds' and competitors' responses to the reforms and to each other's strategies, and many other factors in the larger economy. For these reasons, many of the macroeconomic effects discussed here are unquantifiable. We provide, however, ranges of possible outcomes where we can without being speculative and we discuss effects qualitatively, as well. Much of the qualitative analysis of the reforms remains similar to that presented in the Proposing Release. We note, however, that the magnitude of the macroeconomic effects, both positive and negative, may be greater for funds that are subject to

[1855] *See, e.g.*, BlackRock II Comment Letter; Goldman Sachs Comment Letter; Schwab Comment Letter; Vanguard Comment Letter; CFA Institute Comment Letter; Comm. Cap. Mkt. Reg. Comment Letter.

[1856] *See, e.g.*, BlackRock II Comment Letter; Dreyfus Comment Letter; Federated X Comment Letter; Goldman Sachs Comment Letter; Vanguard Comment Letter; American Benefits Council Comment Letter.

both a floating NAV and fees and gates than the funds subject to just one type of reform. Many commenters noted that the combination of reforms would have a greater impact than either alternative alone.[1857]

In the remaining portion of this section, we discuss in detail the likely macroeconomic effects of our primary reforms and the effects that these amendments may have on efficiency, competition, and capital formation. We first examine the effect of our amendments on investors in money market funds. We then analyze the effect on the money market fund industry and the short-term financing markets.

1. Effect on Current Investors in Money Market Funds

As of February 28, 2014, money market funds had approximately $3.0 trillion in assets under management. Of this $3.0 trillion, government money market funds had approximately $959 billion in assets under management.[1858] Government money market funds will not be required to comply with either fees and gates or floating NAV requirements. Because the regulatory landscape for these funds will remain largely unchanged, we anticipate current investors will likely remain invested in the funds.

Non-government funds, however, will be subject to fees and gates, and some investors may shift their assets to government funds or other investment alternatives. Non-government funds, which include prime and tax-exempt funds, held approximately $2.1 trillion in assets as of February 28, 2014. Of this approximately $2.1 trillion, we estimate retail prime funds managed approximately 33% of prime fund assets (not including tax-exempt funds) or $593 billion,

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1857 *See, e.g.*, Fidelity Comment Letter; Invesco Comment Letter; Northern Trust Comment Letter; State Street Comment Letter; SunGard Comment Letter; Wells Fargo Comment Letter; Government Finance Officers Association, et al. (Sept. 17, 2013) ("GFOA II").

1858 Based on Form N-MFP data as of February 28, 2014.

whereas retail tax-exempt funds managed 71% of tax-exempt fund assets or $197 billion of assets, or $790 billion in total retail fund assets.[1859] The remaining funds are institutional prime funds, which will be subject to an additional floating NAV requirement. We estimate that institutional prime funds, other than tax-exempt funds, managed approximately 67% of prime fund assets (not including tax-exempt fund assets) or $1.2 trillion in assets and institutional tax-exempt funds managed 29% of tax-exempt funds assets or $82 billion, for a total of $1.269 trillion.[1860] Consistent with these estimates, commenters noted that approximately 30% of tax-exempt funds currently self-report as institutional funds.[1861]

As noted in the Proposing Release, the Commission recognizes that imposing fees and gates on non-government money market funds and an additional floating NAV requirement on institutional prime funds will likely affect the willingness of investors to commit capital to certain money market funds. On the one hand, the fees and gates requirements will have little effect on funds and their investors except during times of fund distress. During such exceptional times, investors, especially investors who are unlikely to redeem shares, may view the fees and gates requirements as protecting them from incurring costs from heavy shareholder redemptions and improving their funds' ability to manage and mitigate potential contagion

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1859 Based on data from Form N-MFP and iMoneyNet data as of February 28, 2014. To estimate retail and institutional segments for non-government funds, we used self-reported fund data from iMoneyNet as of February 28, 2014 to estimate percentages for retail and institutional segments for each fund type. We then multiplied the percentages times the total market size segments, as provided by Form N-MFP as of February 28, 2014. We note the retail designation is self-reported and omnibus accounts in these funds may include both individual and institutional beneficial owners. For these reasons, our estimates may underestimate the number of funds with retail investors.

1860 Our staff's analysis, based on iMoneyNet data, shows that the amount of municipal money market fund assets held by institutional investors varied between 25% to 43% between 2001 to 2013.

1861 *See, e.g.*, BlackRock II Comment Letter; Federated VII Comment Letter; J.P. Morgan Comment Letter; Dreyfus II Comment Letter.

from such redemptions. Likewise, some, but not all, investors in institutional prime funds may view the floating NAV requirement as reducing their funds' susceptibility to heavy investor redemptions and minimizing shareholder dilution. We believe the amendments more generally will increase funds' resiliency and treat investors more equitably than the rules do today. Further, one commenter pointed out that floating NAV money market funds will likely offer higher returns than stable NAV government money market funds, and thus will continue to attract investment.[1862] This commenter argued that institutional investors are unlikely to reallocate assets from floating NAV institutional prime funds because they will continue to be one of the most conservative and flexible investment alternatives, even with a floating NAV.[1863] Finally, this commenter contended that investor education may improve investor confidence in floating NAV money market funds, which could attract capital.[1864]

On the other hand, we recognize many current investors in non-government funds, especially institutions, may prefer products that offer guaranteed liquidity and a stable NAV rather than non-government funds that will be subject to fees and gates and a floating NAV requirement after the reforms. As we noted in the Proposing Release and in this Release, we anticipate these investors will consider the tradeoffs involved with continuing to invest in the money market funds that are subject to the new requirements. As discussed in section III.A.1.c.iv above, several commenters noted and we concur that fees and gates might force some investors to either abandon or severely restrict investment in affected money market

1862 *See* Thrivent Comment Letter.

1863 *Id.*

1864 *Id.*

funds.[1865] Likewise, commenters expressed concern that investors would migrate away from institutional prime funds because a floating NAV would eliminate the stable value feature that currently makes money market funds attractive to many shareholders.[1866] As discussed in detail in section III.B.1 above, and noted by commenters,[1867] unlike most investment products, money market funds are generally used as cash management tools, and a floating NAV may curtail the ability of some investors to use money market funds for cash management purposes. Investors also may be prohibited by board-approved guidelines, internal policies, or other restrictions from investing in products that do not have a stable value per share.[1868] A floating NAV also could drive investors with a more limited loss tolerance away from money market funds.[1869]

The Commission acknowledges, and many commenters concur,[1870] that, as a result of our reforms, some investors may reallocate assets to either government money market funds or other investment alternatives. We do not anticipate our reforms will have a substantial effect on the

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1865 Ky. Inv. Comm'n Comment Letter; Boeing Comment Letter; Schwab Comment Letter; American Bankers Ass'n Comment Letter; State Street Comment Letter; GFOA II Comment Letter; 42 Members of U.S. Congress Comment Letter.

1866 Fidelity Comment Letter; Legg Mason & Western Asset Comment Letter; SunGard Comment Letter; U.S. Bancorp Comment Letter; Association for Financial Professionals, et al. (Sept. 17, 2013) ("Ass'n Fin. Profs. II Comment Letter"); Defined Contribution Institutional Investment Association (Sept. 17, 2013) ("Def. Contrib. Inst. Inv. Ass'n Comment Letter"); GFOA II Comment Letter.

1867 *See, e.g.,* Form Letter Type E [1]; Federated IV Comment Letter; Invesco Comment Letter; State Street Comment Letter; Chamber II Comment Letter; GFOA II Comment Letter; National Association of State Auditors, Comptrollers and Treasurers (Sept. 17, 2013).

1868 Form Letter Type B [2], Type D [1-2], and Type F [1]; Federated IV Comment Letter; J.P. Morgan Comment Letter; American Benefits Council Comment Letter; Ass'n Fin. Profs. II Comment Letter; National Association of College and University Business Officers (Sept. 17, 2013) ("Nat'l Ass'n of College & Univ. Bus. Officers Comment Letter"); Chamber II Comment Letter; State Treasurer, State of Utah (Aug. 26, 2013) ("Utah Treasurer Comment Letter").

1869 BlackRock II Comment Letter; SunGard Comment Letter; Treasury Strategies Comment Letter; American Bankers Ass'n Comment Letter; ABA Business Law Section Comment Letter.

1870 *See* Dreyfus DERA Comment Letter, Federated DERA I Comment Letter, Fidelity DERA Comment Letter, Invesco DERA Comment Letter, and Wells Fargo DERA Comment Letter.

total amount of capital invested, although investors may reallocate assets among investment alternatives, potentially affecting issuers and the short-term financing markets, which we discuss below.

As noted earlier in this section, retail investors owned approximately $790 billion of assets in non-government money market funds as of February 28, 2014. Under the reforms, money market funds that qualify as retail funds may continue to offer a stable value as they do today—and facilitate their stable price by use of amortized cost valuation and/or penny-rounding pricing of their portfolios. We anticipate few investors in retail funds will reallocate assets to other investment choices, given that retail funds will continue to offer price stability, yield, and liquidity in all but exceptional circumstances. We are defining a retail money market fund to mean a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.[1871] We expect, however, that at least some investors who are natural persons that currently are invested in non-government funds that are not designated retail may reallocate their assets to retail funds. We anticipate these investors will likely move to retail funds that have investment objectives that are similar to the objectives of their current funds.

Institutions invested approximately $1.27 trillion in non-government money market funds as of February 28, 2014. Of this $1.27 trillion, institutional prime funds, other than tax-exempt funds, managed approximately $1.19 trillion in assets and institutional tax-exempt funds managed $82 billion. Under the reforms, these funds will be subject not only to fees and gates, but also to an additional floating NAV requirement. As such, we believe as much as $1.269

1871 *See* rule 2a-7(a)(25). "Beneficial ownership" typically means having voting and/or investment power. *See supra* note 679.

trillion in assets could be at risk for being reallocated to government funds and other investment alternatives.

But as discussed below, neither the Commission nor most commenters believe that all institutional investors in non-government funds will reallocate their assets. Institutional prime funds typically offer higher yields than government funds, and certain investors receive tax advantages from investing in tax-exempt funds. In addition, we have been informed that, today, the Treasury Department and the IRS will propose new regulations and issue a revenue procedure that we believe should remove the most significant tax-related impediments associated with our floating NAV reform.[1872] Additionally, the Commission, which has authority to set accounting standards, has clarified that an investment in a floating NAV money market fund generally meets the definition of a "cash equivalent."[1873] And according to one commenter, more than half of survey respondents indicated the likelihood of using a floating NAV money market fund would increase if such a fund's shares are considered cash equivalents for accounting purposes.[1874] Thus, we believe these factors and actions taken by the Commission and other regulatory agencies should help preserve the attractiveness of institutional prime funds to investors, perhaps reducing the assets reallocated to alternatives.

As noted by several commenters, it is difficult to estimate the amount of assets that institutional investors might reallocate from non-government funds to either government funds

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1872 *See supra* section III.B.6.

1873 As discussed in detail in section III.B.6.b, many investors questioned whether an investment in a floating NAV money market fund would meet the definition of a "cash equivalent."

1874 *See* Deutsche Comment Letter.

or other investment alternatives.[1875] One commenter estimated that 64% or $806 billion could shift from prime funds to government funds,[1876] whereas another commenter estimated that 25% of assets in its institutional prime funds would transfer permanently into government funds.[1877] A third commenter estimated a shift in assets of between $500 billion and $1 trillion.[1878] In an earlier letter, this commenter cited a survey of institutional investors that estimates investors may withdraw between $660 and $750 billion from money market funds if the Commission adopts a floating NAV requirement because they cannot tolerate principal volatility.[1879] As with much of the survey evidence provided by commenters,[1880] however, we note that this survey was administered before the Proposing Release and before the tax and accounting relief that we are discussing today was known. For example, the survey, which was administered between February 13, 2012 and March 6, 2012, did not consider that government funds might not be subject to the fees, gates, and floating NAV requirements,[1881] and retail money market funds

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1875 *See* Federated DERA I Comment Letter; Invesco DERA Comment Letter.

1876 *See* Fidelity DERA Comment Letter.

1877 *See* Dreyfus DERA Comment Letter; Federated DERA I Comment Letter. The commenter did not provide a basis for the estimate in this letter. We note, however, the commenter presented similar estimates using survey data in a previous letter. *See* Federated X Comment Letter.

1878 *See* Federated DERA I Comment Letter.

1879 *See* Federated X Comment Letter and *Treasury Strategies, Money Market Fund Regulations: The Voice of the Treasurer* (Apr. 19, 2012) http://www.ici.org/pdf/rpt_12_tsi_voice_treasurer.pdf, which is cited in Federated X Comment Letter. Federated concludes, "…at a minimum, $660 to $750 billion would be driven from institutional prime funds…" We note, however, the cited survey queries institutional respondents about money market funds generally and does not reflect that government funds are not be subject to the floating NAV requirement. In addition, the survey did not address fees and gates.

1880 A number of commenters cited survey data indicating that organizations would reduce their use of money market funds under either our floating NAV or liquidity fees and gates reform. *See, e.g.*, ICI Comment Letter (citing the 2013 AFP Liquidity Survey, *Association of Financial Professionals, 2013 AFP Liquidity Survey: Report of Survey Results* (June 2013)); Wells Fargo Comment Letter; Northern Trust Comment Letter; Invesco Comment Letter; BlackRock II Comment Letter; Sungard Comment Letter.

1881 *See Treasury Strategies, Money Market Fund Regulations: The Voice of the Treasurer* (Apr. 19, 2012), *available at* http://www.ici.org/pdf/rpt_12_tsi_voice_treasurer.pdf.

might continue to maintain a stable price. Similarly, the survey designers did not present to survey participants the possibility that the Treasury Department and IRS would propose new regulations and issue a revenue procedure that we believe will remove the most significant tax-related impediments associated with a floating NAV reform.[1882] Moreover, survey designers were not able to anticipate that the Commission, which has authority to set accounting standards, would clarify that an investment in a floating NAV money market fund would meet the definition of a "cash equivalent." For these and other reasons herein, we believe that the survey data submitted by commenters reflecting that certain investors expect to reduce or eliminate their money market fund investments under the floating NAV alternative may overstate how investors are likely to actually behave under the final amendments that we are adopting today.[1883]

The Commission recognizes, however, that some assets will likely flow out of non-government funds as a result of the reforms, and that the greatest effect will likely be on institutional prime funds. Commenters specifically noted that a combination of proposals would force most money market fund sponsors to exit the prime space,[1884] and would cause many investors to invest their cash assets in government money market funds, direct

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1882 *See supra* section III.B.6.a.

1883 *See, e.g.*, Better Markets FSOC Comment Letter, *supra* note 59 (in response to industry survey data reflecting intolerance for the floating NAV, stating that "it is difficult to predict the level of contraction that would actually result from instituting a floating NAV. [. . . .] The move to a floating NAV does not alter the fundamental attributes of money market funds with respect to the type, quality, and liquidity of the investments in the fund. [. . . .] It is therefore unrealistic to think that money market funds . . . will become extinct solely as a result of a move to a more accurate and transparent valuation methodology."); Comment Letter of John M. Winters (Dec. 18, 2012) (available in File No. FSOC-2012-0003) ("[T]he feared migration to unregulated funds has not been quantified and is probably overstated.").

1884 *See, e.g.*, Dreyfus Comment Letter; Invesco Comment Letter; PFM Asset Mgmt. Comment Letter; ICI Comment Letter; SIFMA Comment Letter.

investments, bank deposits, or other investment alternatives.[1885] As discussed in the DERA Study,[1886] the Proposing Release,[1887] and below, there are a range of investment alternatives that currently compete with money market funds. Each of these choices involves different tradeoffs, and money market fund investors that are unwilling or unable to invest in their current option under the reforms would need to analyze the various tradeoffs associated with each alternative. Specifically, investors could choose from among at least the following alternatives: direct investments in money market instruments; money market funds that are not subject to the reforms; bank deposit accounts; bank certificates of deposit; bank collective trust funds; LGIPs; U.S. private funds; offshore money market funds; short-term investment funds ("STIFs"); separately managed accounts; ultra-short bond funds; and short-duration exchange-traded funds ("ETFs").[1888] The following table, taken from the DERA Study and Proposing Release, outlines the principal features of various cash alternatives to money market funds that exist today.

1885 *See, e.g.,* Blackrock II Comment Letter; Dreyfus Comment Letter; Legg Mason & Western Asset Comment Letter; Northern Trust Comment Letter; PFM Asset Mgmt. Comment Letter; SunGard Comment Letter.

1886 *See* DERA Study, *supra* note 24, Table 6.

1887 *See* Proposing Release, *supra* note 25, Table 2.

1888 *See, e.g.,* Comment Letter of Investment Company Institute (Feb. 16, 2012) (available in File No 4-619.) ("ICI Feb 2012 PWG Comment Letter"); Comment Letter of the Association for Financial Professionals et al. (Apr. 4, 2012) (available in File No. 4-619) ("AFP Comment Letter").

Table 1

Cash Investment Alternatives						
Product	**Valuation**	**Investment Risks**[A]	**Redemption Restrictions**	**Yield**[B]	**Regulated**	**Restrictions on Investor Base**
Bank demand deposits	Stable	Below benchmark up to depository insurance ("DI") limit; above benchmark above DI limit[C]	No	Below benchmark	Yes	No
Time deposits (CDs)	Stable	Bank counterparty risk above DI limit	Yes[D]	Below benchmark	Yes	No
Offshore money funds (European short-term MMFs)[E]	Stable or Floating NAV	Comparable to benchmark	Some[F]	Comparable to benchmark	Yes	Yes[G]
Offshore money funds (European MMFs)[H]	Floating NAV	Above benchmark	Some	Above benchmark	Yes	Yes
Enhanced cash funds (private funds)	Stable NAV (generally)	Above benchmark	By contract	Above benchmark	No[I]	Yes[J]
Ultra-short bond funds	Floating NAV	Above benchmark	Some	Above benchmark	Yes	No
Collective investment funds[K]	Not stable	Above benchmark	No	Above benchmark	Yes	Tax-exempt bank clients[L]
Short-term investment funds ("STIFs")	Stable	Above benchmark	No	Above benchmark	Yes[M]	Tax-exempt bank clients
Local government investment pools ("LGIPs")	Stable (generally)[N]	Benchmark	No	Benchmark	Yes	Local government and public entities

Cash Investment Alternatives						
Product	**Valuation**	**Investment Risks**[A]	**Redemption Restrictions**	**Yield**[B]	**Regulated**	**Restrictions on Investor Base**
Short-duration ETFs	Floating NAV; Market price[O]	Above benchmark	No	Above benchmark	Yes	No
Separately managed accounts (including wrap accounts)	Not stable	Above benchmark	No	Above benchmark	No	Investment minimum[P]
Direct investment in MMF instruments	Not stable	Comparable to benchmark but may vary depending on investment mix[Q]	No	Comparable to benchmark but may vary depending on investment mix	No	Some[R]

A For purposes of this table, investment risks include exposure to interest rate and credit risks. The column also indicates the general level of investment risk for the product compared with the baseline of prime money market funds and is generally a premium above the risk-free or Treasury rate.

B The table entries reflect average yields in a normal interest rate environment. Certain cash management products, such as certificates of deposits ("CDs") and demand deposits, may be able to offer rates above the baseline in a low interest rate environment.

C The current DI limit is $250,000 per owner for interest-bearing accounts. *See* Deposit Insurance Summary, Federal Deposit Insurance Corporation ("FDIC"), *available at* http://www.fdic.gov/deposit/deposits/.

D Time deposits, or CDs, are subject to minimum early withdrawal penalties if funds are withdrawn within six days of the date of deposit or within six days of the immediately preceding partial withdrawal. *See* 12 CFR 204.2(c)(1)(i). Many CDs are also subject to early withdrawal penalties if withdrawn before maturity, although market forces, rather than federal regulation, impose such penalties. CDs generally have specific fixed terms (*e.g.*, one-, three-, or six-month terms), although some banks offer customized CDs (*e.g.*, with terms of seven days).

E The vast majority of money market fund assets are held in U.S. and European money market funds. *See* Consultation Report of the IOSCO Standing Committee 5 (Apr. 27, 2012) ("IOSCO SC5 Report"), at App. B, §§ 2.1 - 2.36 (in 2011, of the assets invested in money market funds in IOSCO countries, approximately 61% were invested in U.S. money market funds and 32% were invested in European money market funds). Consequently, dollar-denominated European money market funds may provide a limited offshore money market fund alternative to U.S. money market funds. Most European stable value money market funds are a member of the Institutional Money Market Funds Association ("IMMFA"). According to IMMFA, as of March 1, 2013, there were approximately $286 billion U.S. dollar-denominated IMMFA money market funds. *See* www.immfa.org (this figure excludes accumulating NAV U.S. dollar-denominated money market funds). Like U.S. money market funds, European short-term money market funds must have a dollar-weighted average maturity of no more than 60 days and a dollar-weighted average life maturity of no more than 120 days, and their portfolio securities must hold one of the two highest short-term credit ratings and have a maturity of no more than 397 days. However, unlike U.S. money market funds, European short-term money market funds may either have a floating or fixed NAV. *Compare* Common Definition of European Money Market Funds (Ref. CESR/10-049) *with* rule 2a-7.

F Most European money market funds are subject to legislation governing Undertakings for Collective Investment in Transferable Securities ("UCITS"), which also covers other collective investments. *See, e.g.*, UCITS IV Directive, Article 84 (permitting a UCITS to, in accordance with applicable national law and its instruments of incorporation, temporarily suspend redemption of its units); Articles L. 214-19 and L. 214-30 of the French Monetary and Financial Code (providing that under exceptional circumstances and if the interests of the UCITS units holders so demand, UCITs may temporarily suspend redemptions).

G Section 7(d) of the Investment Company Act requires that any non-U.S. investment company that wishes to register as an investment company in order to publicly offer its securities in the U.S. must first obtain an order from the SEC. To issue such an order, the SEC must find that "by reason of special circumstances or arrangements, it is both legally and practically feasible to enforce the provisions of [the Act against the non-U.S. fund,] and that the issuance of [the] order is otherwise consistent with the public interest and the protection of investors." No European money market fund has received such an order. European money market funds could be offered to U.S. investors privately on a very limited basis subject to certain exclusions from investment company regulation under the Investment Company Act and certain exemptions from registration under the Securities Act. U.S. investors purchasing non-U.S. funds in private offerings, however, may be subject to potentially significant adverse tax implications. *See, e.g.*, Internal Revenue Code of 1986 §§ 1291 through 1297. Moreover, as a practical matter, and in view of the severe consequences of violating the Securities Act registration and offering requirements, most European money market funds currently prohibit investment by U.S. Persons.

H European money market funds may have a dollar-weighted average portfolio maturity of up to six months and a dollar-weighted average life maturity of up to 12 months that are significantly greater than are permitted for U.S. money market funds. *Compare* Common Definition of European Money Market Funds (Ref. CESR/10-049) *with* rule 2a-7.

I Private funds generally rely on one of two exclusions from investment company regulation by the Commission. Section 3(c)(1) of the Investment Company Act, in general, excludes from the definition of "investment company" funds whose shares are beneficially owned by not more than 100 persons where the issuer does not make or propose to make a public offering. Section 3(c) (7) of the Act places no limit on the number of holders of securities, as long as each is a "qualified purchaser" (as that term is defined in section 2(a)(51) of the Act) when the securities are acquired and the issuer does not make or propose to make a public offering. Most retail investors would not fall within the definition of "qualified purchaser." Moreover, such private funds also generally rely on the private offering exemption in section 4(2) of the Securities Act or Securities Act rule 506 to avoid the registration and prospectus delivery requirements of Section 5 of the Securities Act. Rule 506 establishes "safe harbor" criteria to meet the private offering exemption. The provision most often relied upon by private funds under rule 506 exempts offerings made exclusively to "accredited investors" (as that term is defined in rule 501(a) under the Securities Act). Most retail investors would not fall within the definition of "accredited investor." Offshore private funds also generally rely on one of the two non-exclusive safe harbors of Regulation S, an issuer safe harbor and an offshore resale safe harbor. If one of the two is satisfied, an offshore private fund will not have to register the offer and sale of its securities under the Securities Act. Specifically, rules 903(a) and 904(a) of Regulation S provide that offers and sales must be made in "offshore transactions" and rule 902(h) provides that an offer or sale is made in an "offshore transaction" if, among other conditions, the offer is not made to a person in the United States. Regulation S is not available to offers and sales of securities issued by investment companies required to be registered, but not registered, under the Investment Company Act. *See* Regulation S Preliminary Notes 3 and 4.

J See id.

K Collective investment funds include collective trust funds and common trust funds managed by banks or their trust departments, both of which are a subset of short-term investment funds. For purposes of this table, short-term investment funds are separately addressed.

L Collective trust funds are generally limited to tax-qualified plans and government plans, while common trust funds are generally limited to tax-qualified personal trusts and estates and trusts established by institutions.

M STIFs are generally regulated by 12 CFR 9.18. The Office of the Comptroller of the Currency recently reformed the rules governing STIFs subject to their jurisdiction to impose similar requirements to those governing money market funds. *See* Office of the Comptroller of Currency, Treasury, Short-Term Investment Funds [77 FR 61229 (Oct. 9, 2012)].

N Regarding all items in this row of the table, LGIPs generally are structured to meet a particular investment objective. In most cases, they are designed to serve as short-term investments for funds that may be needed by participants on a day-to-day or near-term basis. These local government investment pools tend to emulate typical money market mutual funds in many respects, particularly by maintaining a stable net asset value of $1.00 through investments in short-term securities. A few local government investment pools are designed to provide the potential for greater returns through investment in longer-term securities for participants' funds that may not be needed on a near-term basis. The value of shares in these local government investment pools fluctuates depending upon the value of the underlying investments. Local government investment pools limit the nature of underlying investments to those in which its participants are permitted to invest under applicable state law. *See* http://www.msrb.org/Municipal-Bond-Market/About-Municipal-Securities/Local-Government-Investment-Pools.aspx. Investors in local government investment pools may include counties, cities, public schools, and similar public entities. *See, e.g.*, The South Carolina Local Government Investment Pool Participant Procedures Manual, *available at* http://www.treasurer.sc.gov/media/4755/The-South-Carolina-Local-Government-Investment-Pool-Participant-Procedures-Manual.pdf.

O Although the performance of an ETF is measured by its NAV, the price of an ETF for most shareholders is not determined solely by its NAV, but by buyers and sellers on the open market, who may take into account the ETF's NAV as well as other factors.

P Many separately managed accounts have investment minimums of $100,000 or more.

Q Depending on the nature and scope of their investments, these investors may also face risks stemming from a lack of portfolio diversification.

R Some money market fund instruments are only sold in large denominations or are only available to qualified institutional buyers. *See generally* rule 144A under the Securities Act (17 CFR 230.144A(7)(a)(1)).

These investment options offer different combinations of price stability, risk exposure, return, investor protections, and disclosure. For example, some current money market fund investors, in particular bank trust departments and corporate trusts, may choose to manage their cash themselves and, based on our understanding of institutional investor cash management practices, many of these investors will invest directly in securities similar to those held by money market funds today. According to one commenter, however, this strategy may create additional burdens and risks for these investors, including having to acquire, retain, and monitor the maturity of short-term investments.[1889] Any desire to self-manage cash will likely be tempered by the expertise required to invest in a diversified portfolio of money market securities directly and the costs of investing in those securities given the economies of scale that will be lost when each investor has to conduct credit analysis itself for each investment (in contrast to money market funds which are able to spread their credit analysis costs for each security across their entire shareholder base).[1890] As such, we anticipate that direct investment

1889 *See, e.g.*, M&T Bank Comment Letter.

1890 *See, e.g.*, Comment Letter of U.S. Chamber (Jan. 23, 2013) (available in File No. FSOC-2012-0003) ("U.S. Chamber FSOC Comment Letter") ("Quite simply, it is more efficient and economical to pay the management fee for a money market funds than to hire the internal staff to manage the investment of in securities similar to those held by money market funds today will be limited to investors with large cash management requirements and active Treasury functions.

Alternatively, commenters suggested that some investors, especially investors in institutional prime funds, will reallocate assets to government funds.[1891] Investors that shift their assets from institutional prime funds to government money market funds will likely sacrifice yield,[1892] but they will retain the principal stability and liquidity of their assets. To the extent that assets under management in government funds increase, we anticipate investors will have more government funds from which to choose than they do today. This expected increase in the number government funds could be because complexes that currently offer government funds will offer additional government funds or because other complexes will offer new government funds. In either case, competition among government funds should increase although the impact on competition likely should, at the margin, be larger if new complexes enter the government fund market.

In addition, a reallocation of assets to government funds could lower the yields received by both investors in government funds and direct purchasers of government securities. If an increase in demand for government funds, which must largely invest in eligible government securities, subsequently increases the demand for these securities,[1893] the rates on eligible

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cash.").

1891 Federated IV Comment Letter; TRACS Financial Comment Letter; Wells Fargo Comment Letter; Boeing Comment Letter; American Bankers Ass'n Comment Letter; Def. Contrib. Inst. Inv. Ass'n Comment Letter; ICI Comment Letter; *see also supra* section III.C.

1892 *See, e.g.,* Federated X Comment Letter; Angel Comment Letter. Commenters noted that investors that shift assets from prime funds to government funds will earn lower rates on their investments because government funds are less risky and offer lower yields than prime funds.

1893 Government money market funds must invest at least 99.5 percent of their portfolio in cash, "government securities" as defined in section 2(a)(16) of the Act, and repurchase agreements collateralized with government securities and hence yields on government funds might fall.[1894] Several commenters argued that absorbing assets from non-government funds into government funds could reduce yields on eligible government securities in what is already a low yield environment.[1895] The extent to which asset reallocation affects yields on government funds, however, will depend on the amount of capital that shifts into government funds and on the supply of eligible government securities to meet heightened demand for these securities by government funds. We discuss these issues in further detail below.

As noted above, commenters indicated that some investors that currently invest in non-government funds may shift assets into demand deposits or short-maturity certificates of deposit. FDIC insurance that covers deposit accounts (which include checking and savings accounts, money market deposit accounts, and certificates of deposit) guarantees principal stability within the insurance limits and in certain instances liquidity irrespective of market conditions.[1896] We noted in the Proposing Release that some institutions may be deterred from moving their investments from money market funds to banks, because their assets in many cases may be above the current depository insurance limits; assets above the limits would be

government securities. *See* rule 2a-7(a)(16). Allowable securities include securities issued by government-sponsored entities such as the Federal Home Loan Banks, government repurchase agreements, and those issued by other ''instrumentalities'' of the U.S. government. It excludes, however, securities issued by state and municipal governments, which do not generally share the same credit and liquidity traits as U.S. government securities.

1894 *See, e.g.,* Federated X Comment Letter.

1895 *See* Dreyfus DERA Comment Letter; Federated DERA I Comment Letter; Invesco DERA Comment Letter; Wells Fargo DERA Comment Letter.

1896 FDIC insurance covers all deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit. FDIC insurance does not cover other financial products and services that banks may offer, such as stocks, bonds, mutual fund shares, life insurance policies, annuities, or securities. The standard insurance amount is $250,000 per depositor, per insured bank, for each account ownership category. *See* http://www.fdic.gov/deposit/deposits/.

exposed to counterparty and sector-specific risks that are different and less attractive than the risk profiles of diversified non-government money market funds today.[1897] Nevertheless, these investors may gain full insurance coverage if they are willing and able to break their cash holdings into sufficiently small pieces and spread them across banks, but doing so may impose an administrative burden on investors.[1898]

It is important to note that investors will likely earn lower yields on deposit accounts than what they currently receive on non-government funds.[1899] One commenter even suggested flows of capital into banks may create additional downward pressure on the yields paid to depositors, further lowering investor returns.[1900] If the additional capital that flows from non-government funds is more than banks can profitably lend, then banks might reduce the interest rates that they pay to depositors. If, however, banks have sufficient opportunities to invest the additional capital, interest rates would likely not fall.

In addition, as discussed above, investors in non-government funds may not reallocate assets in a significant way, and if they do, may not reallocate large amounts of capital to banks.

1897 *See, e.g.,* Comment Letter of Crawford and Company (Jan. 14, 2013) (available in File No. FSOC-2012-0003) ("Bank demand deposits . . . lack the diversification of money market funds and carry inherent counterparty risk."); Comment Letter of Investment Company Institute (Jan. 10, 2011) (available in File No 4-619) ("The Report suggests that requiring money market funds to float their NAVs could encourage investors to shift their liquid balances to bank deposits. We believe that this effect is overstated, particularly for institutional investors. Corporate cash managers and other institutional investors would not view an undiversified holding in an uninsured (or underinsured) bank account as having the same risk profile as an investment in a diversified short-term money market fund. Such investors would continue to seek out diversified investment pools, which may or may not include bank time deposits."). *See also* Federated X Comment Letter.

1898 Certain third party service providers offer such services. *See, e.g.,* Nathaniel Popper and Jessica Silver-Greenberg, *Big Depositors Seek New Safety Net*, N.Y. Times (Dec. 30, 2012).

1899 *See, e.g.,* Federated X Comment Letter; Angel Comment Letter.

1900 *See* Angel Comment Letter.

Given that deposit accounts held over $8 trillion as of February 28, 2014,[1901] we do not anticipate that additional flows from non-government funds will have a sufficient impact to materially push down interest rates at banks. Even if investors reallocate capital to demand deposits, recent history indicates demand deposits can successfully absorb large flows of capital from investors. As discussed in the DERA Study, individual and business holdings in checking deposits and currency have significantly increased in recent years relative to their holdings of money market fund shares.[1902] The 2012 AFP Liquidity Survey of corporate treasurers indicates that bank deposits accounted for 51% of the surveyed organizations' short-term investments in 2012, which is up from 25% in 2008.[1903] Money market funds accounted for 19% of these organizations' short-term investments in 2012, down from 30% just a year earlier, and down from almost 40% in 2008.[1904]

We discussed in the Proposing Release and commenters who addressed this issue agreed that one practical constraint for many money market fund investors is that they may be precluded from investing in certain alternatives outside of funds regulated under rule 2a-7, such as STIFs, offshore money market funds, LGIPs, separately managed accounts, and direct investments in money market instruments, due to significant restrictions on participation.[1905]

1901 From Board of Governors, Federal Reserve System, as of February 28, 2014. Demand deposits at domestically chartered commercial banks, U.S. branches, and agencies of foreign banks, and Edge Act corporations (excluding those amounts held by depository institutions, the U.S. government, and foreign banks and official institutions) less cash items in the process of collection and Federal Reserve float held $1.069 trillion. Savings deposits, which include money market deposit accounts, totaled $7.221 trillion. *See* http://www.federalreserve.gov/Releases/h6/current/default.htm.

1902 *See* DERA Study, *supra* note 24, at figure 18.

1903 *See* 2012 AFP Liquidity Survey, *supra* note 64.

1904 *See id.*, 2008 AFP Liquidity Survey, *supra* note 64.

1905 *See, e.g.,* Form Letter Type B [2], Type D [1-2], and Type F [1]; Federated IV Comment Letter; J.P. Morgan Comment Letter; Treasury Strategies Comment Letter; American Benefits Council Comment

For example, STIFs are only available to accounts for personal trusts, estates, and employee benefit plans that are exempt from taxation under the U.S. Internal Revenue Code.[1906] STIFs subject to regulation by the Office of the Comptroller of the Currency also are subject to less stringent regulatory restrictions than rule 2a-7 imposes, and STIFs under the jurisdiction of other banking regulators may be subject to no restrictions at all equivalent to rule 2a-7.[1907] . Similarly, European money market funds can take on more risk than U.S. money market funds because they are not currently subject to regulatory restrictions as stringent as rule 2a-7 on their credit quality, liquidity, maturity, and diversification.[1908] If investment alternatives are less stringently regulated than non-government funds, then they could pose greater risk than money market funds and thus may not be viable or attractive alternatives to investors that highly value principal stability. Offshore money market funds, which are investment pools domiciled and authorized outside the United States, generally sell shares to U.S. investors only in private offerings, limiting their availability to investors at large.[1909] Further, few offshore money market funds offer their shares to U.S. investors in part because doing so could create adverse

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Letter; Ass'n Fin. Profs. II Comment Letter; Nat'l Ass'n of College & Univ. Bus. Officers Comment Letter.

1906 *See, e.g.,* American Bankers Ass'n Comment Letter. *See* Testimony of Paul Schott Stevens, President and CEO of the Investment Company Institute, before the Committee on Banking, Housing, and Urban Affairs, United States Senate, on "Perspectives on Money Market Mutual Fund Reforms," June 21, 2012, *available at* http://www.ici.org/pdf/12_senate_pss_mmf_written.pdf.

1907 For a discussion of the regulation of STIFs by the Office of the Comptroller of the Currency (OCC), *see* Proposing Release, *supra* note 25, Table 2, explanatory n.M. The OCC's rule 9.18 governs STIFs managed by national banks and federal savings associations. Other types of banks may or may not follow the requirements of OCC rule 9.18, depending, for example, on state law requirements and federal tax laws. *See* Office of the Comptroller of Currency, Treasury, Short-Term Investment Funds, at n.6 and accompanying text [77 FR 61229 (Oct. 9, 2012)].

1908 For a discussion of the regulation of European money market funds, *see* Proposing Release, *supra* note 25, Table 2, explanatory nn.E and H; Common Definition of European Money Market Funds (Ref. CESR/10-049). *See also supra* section II.B.3.

1909 *See* Proposing Release, *supra* note 25, Table 2, explanatory n.I.

tax consequences.[1910]

In the Proposing Release and sections III.A and III.B of this Release, we recognize, and commenters concurred,[1911] that some current money market fund investors may have self-imposed restrictions or fiduciary duties that limit the risks they can assume or that preclude them from investing in certain alternatives. They may be prohibited from investing in, for example, enhanced cash funds that are privately offered to institutions, wealthy clients, and certain types of trusts due to greater investment risk, limitations on investor base, or the lack of disclosure and legal protections of the type afforded them by U.S. securities regulations.[1912] Likewise, we recognized in the Proposing Release that money market fund investors that can only invest in SEC-registered investment vehicles could not invest in LGIPs, which are not registered with the SEC (as states and local state agencies are excluded from regulation under the Investment Company Act). In addition, many unregistered and offshore alternatives to money market funds—unlike registered money market funds in the United States today—are not prohibited from imposing gates or redemption fees or suspending redemptions.[1913] Other investment alternatives, such as bank CDs, also impose redemption restrictions.

The Commission recognizes that not every cash investment alternative presented here will be available and attractive to each investor, which may leave investors with fewer

1910 *See* Proposing Release, *supra* note 25, Table 2, explanatory n.G.

1911 *See, e.g.,* Form Letter Type B [2], Type D [1-2], and Type F [1]; Federated IV Comment Letter; J.P. Morgan Comment Letter; Treasury Strategies Comment Letter; American Benefits Council Comment Letter; Ass'n Fin. Profs. II Comment Letter; Nat'l Ass'n of College & Univ. Bus. Officers Comment Letter.

1912 According to the 2012 AFP Liquidity Survey, *supra* note 64, only 21% of respondents stated that enhanced cash funds were permissible investment vehicles under the organization's short-term investment policy. In contrast, 44% stated that prime money market funds were a permissible investment and 56% stated that Treasury money market funds were a permissible investment.

1913 *See, e.g.,* Proposing Release, *supra* note 25, Table 2, explanatory n.F.

investment options than those enumerated above. Investors, however, have available a range of investment options, with each choice offering different tradeoffs. Money market fund investors that are unwilling or unable to invest in their current option after the reforms will need to analyze the various tradeoffs associated with each alternative. We anticipate the money market fund industry may also innovate in various ways to meet investors' needs. For example, some managers may try to stabilize their funds' NAVs by choosing low principal-risk portfolio investment strategies, whereas other funds may seek to offer higher yields within the restrictions of rule 2a-7.

We also recognize the reforms adopted today may cause investors to reallocate assets to investment alternatives that offer different combinations of yield, risk, and features than those of the funds in which they are invested today. The fact that investors have bought non-government funds rather than these other investment alternatives reveals that they almost certainly prefer these funds to the alternatives. We, and a number of commenters,[1914] acknowledge that it is doubtful that any of the non-money market fund investment alternatives provide the identical combination of price stability, transparency, risk, liquidity, yield, and level of regulation provided by past money market funds. However, with today's adopted amendments, the Commission addresses certain concerns inherent in the current structure of non-government money market funds that create incentives for shareholders to redeem shares ahead of other investors and thus contribute to the likelihood of heavy share redemptions and

1914 Form Letter Type A [1], Type B [2], Type C [1], Type D [1], and Type F [1]; Federated II Comment Letter; PFM Asset Mgmt. Comment Letter; Comment Letter of Square 1 Asset Management (Sept. 17, 2013) ("Square 1 Comment Letter"); Comment Letter of Farmers Trust Company (July 23, 2013) (Farmers Trust Comment Letter"); Comment Letter of City of Chicago, Office of the City Treasurer (Sept. 24, 2013) ("Chicago Treasurer Comment Letter"); Comment Letter of United States Conference of Mayors (July 18, 2013) ("U.S. Conference of Mayors Comment Letter").

shareholder dilution. Specifically and as pointed out in the DERA study, although the 2010 reforms made the funds more resilient to both portfolio losses and investor redemptions, no fund would have been able to withstand the losses that the Reserve Primary Fund incurred in 2008 without breaking the buck, and nothing in the 2010 reforms would have prevented the Reserve Primary Fund's holding of Lehman Brothers debt. We therefore believe that the relative costs to investors from losing certain features of some of today's money market funds should be acceptable in light of the significant benefits stemming from advancing our goals of reducing money market funds' susceptibility to heavy redemptions, improving their ability to manage and mitigate potential contagion from redemptions, and increasing the transparency of their risks.

2. *Efficiency, Competition and Capital Formation Effects on the Money Market Fund Industry*

In this section, we consider certain effects on the money market fund industry of investors reallocating money away from certain money market funds as a result of our reforms. As discussed in section III.A, our primary reforms will not apply to government money market funds.[1915] As such, we anticipate current investors in government funds will likely remain invested in these funds, as they will offer the price stability, liquidity, and yield to which these investors are accustomed.[1916] As discussed further in section III.K.3 below, in fact we expect some non-government money market fund shareholders will likely reallocate their investments to

[1915] Government money market funds are permitted to opt in to the fees and gates reforms if they disclose they are doing so in advance. Because government funds hold assets with little credit risk, we believe it is unlikely that these funds will ever choose to impose fees or gates.

[1916] If government funds experience heavy inflows, the yields on eligible government securities, in which government funds largely invest, might fall. If the yields on portfolio assets fall, the yields on the fund will decline as well. We discuss this possibility and its impact in greater detail below.

government money market funds. Accordingly, to the extent investors reallocate funds between these two alternatives, we expect that our primary reforms will affect the short-term funding market and capital allocation at least in the short-run as discussed further below. We also expect to have an increase in allocative efficiency because investors will be making choices best suited to their investment risk profiles. Furthermore, to the extent that new government funds will be offered because of an increased demand for government funds, competition among government funds will also increase.

Like government funds, money market funds that qualify as retail funds will also be able to continue transacting at a stable value and will not be subject to the floating NAV reform. Retail funds will be required to consider imposing a fee or gate if their liquidity comes under stress. As such, retail funds will be competing with government and floating NAV funds based on their structure. Although some investors may reallocate their investments away from retail money market funds because they could impose a fee or gate, we expect many investors will remain in these funds because their investment experience under normal market conditions is unlikely to change. Some investors may move into retail money market funds in response to our reforms, as there are likely some natural persons currently invested in funds that are categorized as institutional prime or institutional tax-exempt money market funds that would prefer to stay in a money market fund that maintains a stable NAV per share and that has a similar investment risk profile as their current fund. Funds with both retail and institutional investors also may create new retail-only non-government funds with the same investment objective. Although we do not have a basis for estimating the amount of assets that might be reallocated to retail non-government funds because we do not know what fraction of the shareholder base of these funds today categorized as institutional would qualify as natural persons, we anticipate the number of retail funds and competition among these funds to increase as they compete to attract new investors and thus increase their allocative efficiency. The impact on competition likely should, at the margin, be larger if the increase in the number retail funds stems from new complexes offering additional retail funds as opposed to current complexes offering additional retail funds.

Today's fees and gates amendments are designed to moderate redemption requests by allocating liquidity costs to those shareholders who impose such costs on funds through their redemptions and, in certain cases, stop heavy redemptions in times of market stress by providing fund boards with additional tools to manage heavy redemptions and improve risk transparency. As such, the fees and gates amendments should increase allocational efficiency in the non-government money market fund industry by making liquidity risk more apparent to shareholders in these funds through enhanced disclosure and by allocating the costs of redeeming shares when liquidity is costly to shareholders that redeem shares.[1917] If investors make better informed investment decisions given the liquidity risk inherent in these money market funds as a result of the fees and gates amendments, allocational efficiency will be enhanced.

In addition to the impacts discussed above, the combination of our floating NAV and fees and gates reforms may have a number of effects on efficiency, competition, and capital formation in the institutional prime money market fund industry. First, by allocating market-based gains and losses on portfolio securities in institutional prime funds to each shareholder on a proportionate basis, the floating NAV should increase allocational efficiency in this industry, as investors are allocating their investment capital based on true returns.[1918] Doing so will

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1917 Allocational efficiency refers to investors efficiently allocating their funds to available investments, taking all relevant factors into account.

1918 Some commenters noted the potential for inequitable treatment of shareholders under the stable NAV further increase the allocative efficiency discussed above in institutional prime money market funds attributable to the fees and gates reform and its effect on shareholders' understanding of money market funds' liquidity risk.

Our primary reforms also may affect how different kinds of money market funds compete in the industry, and thus affect efficiency, competition, and capital formation in the industry. For example, we anticipate that some institutional investors will continue to demand a combination of relative price stability, liquidity, and yields that are higher than the yields offered by government funds. Managers of floating NAV money market funds may respond to these investors in one of several ways. Some managers may respond by altering their portfolio management and preferentially investing portfolio holdings in shorter-maturity, lower-risk securities than they do today. They would do so to reduce NAV fluctuations and lessen the probability the fund's weekly liquid assets decline sufficiently for a fee or gate to be possible. These portfolio management changes may affect competition within the institutional prime money market fund industry (or broader money market fund industry) if these funds more favorably compete with other less conservatively managed funds. They also could affect capital formation to the extent they shift portfolio investment away from certain issuers or certain maturities or lessen the yields passed through to investors from their money market fund investments. In addition, an increase in these types of funds could encourage issuers to fund

model. *See, e.g.,* Better Markets FSOC Comment Letter (stating that "an investor that succeeds in redeeming early in a downward spiral may receive more than they deserve in the sense that they liquidate at $1.00 per share even though the underlying assets are actually worth less. Without a sponsor contribution or other rescue, that differential in share value is paid by the shareholders remaining in the fund, who receive less not only due to declining asset values but also because early redeemers received more than their fair share of asset value."); Comment Letter of Wisconsin Bankers Association (Feb. 15, 2013) (available in File No. FSOC-2012-0003) (stating that "[a] floating NAV has the benefits of . . . reducing the possibilities for transaction activity that results in non-equitable treatment across all shareholders"). *See also supra* section II.B.1.

themselves with shorter term debt.

Other portfolio managers of institutional prime funds could respond by using affiliate financial support to minimize principal volatility or avoid declines in weekly liquid assets that could lead to the imposition of a fee or gate.[1919] The emergence of these types of money market funds also could have competitive effects within the institutional prime money market fund industry (or broader money market fund industry), depending on how favorably they compete with money market funds that are managed differently. These funds could reduce allocational efficiency to the extent shareholders invest in money market funds based on the assumption that principal volatility and liquidity risk will be borne by the fund's sponsor or other affiliate rather than on the risk-return profile of the fund's portfolio (although this impact could be tempered to the extent any of these costs are passed on to investors through higher management fees). They also could affect capital formation if affiliate sponsor support leads to higher investment in riskier or longer-term debt securities than otherwise would occur if investors had to bear the principal volatility or liquidity risk accompanying those money market fund investments.

Finally, some portfolio managers of institutional prime money market funds may seek to competitively distinguish their funds post-reform by altering their portfolio management and investing in relatively longer-term or riskier securities than they do today. These funds may seek to appeal to investors that, if investing in a floating NAV money market fund that could be subject to fees or gates, now may be willing to sacrifice liquidity in times of stress or some principal stability for greater yield. The emergence of these types of money market funds may

[1919] Fund affiliates could avoid declines in weekly liquid assets, for example by purchasing non-weekly liquid assets or directly purchasing fund shares. Under the reforms we are adopting today, we are requiring increased disclosure of any affiliate financial support of money market funds. These reforms, and their effects on efficiency, competition, and capital formation, are discussed above in sections III.E and III.F enhance competition in the money market fund industry among different types of institutional prime money market funds along the risk-return spectrum. It also would affect changes in capital formation post-reform to the extent that it shifts investment to issuers of longer-term or riskier securities or increases yields paid to investors (or increases management fees paid to certain types of fund complexes). Thus, depending on the magnitude of the primary reforms' effect on the assets managed by different types of money market funds, the type and number of institutional prime funds may contract overall, potentially limiting investors' choices among them, or may expand, potentially enhancing investors' choices among them. Accordingly, competition among institutional prime funds may increase or decrease with an impact that will likely be stronger if the number of complexes offering institutional prime funds changes.

Finally, as discussed above, we recognize investors in institutional prime funds may reallocate assets to investment alternatives. In addition to the potential effects on investors described above and the short-term funding markets described below, a reallocation of assets out of these funds may affect the profitability of the money market fund industry, and thus have incremental effects on efficiency, competition, and capital formation. For example, fund complexes that, on net, experience a decline in managed money market fund assets as a result of our primary reforms, will likely earn lower fund advisers' management and other fees than they do today.[1920] It is important to note, however, that fees for managing these assets will still be earned, but by the asset managers to which assets are reallocated. To the extent investors shift assets within a fund complex (e.g., to a government fund), at least some of the fees may be retained by the fund complex. If, however, investors instead reallocate assets to non-money

1920 *See* Federated X Comment Letter.

market fund alternatives, the managers of these other options will benefit. This shift may have competitive implications within the money market fund industry as not all fund complexes are likely to be equally affected by a movement in money market fund assets as a result of the primary reforms. For example, fund complexes that primarily advise government money market funds may benefit competitively as these funds are generally not affected by our primary reforms and may experience inflows, which would raise these fund advisers' management fee income. Similarly, fund complexes that manage mostly retail money market funds may be competitively advantaged post-reform over those that primarily manage institutional prime funds. These latter funds will be subject to both our floating NAV and fees and gates reforms and thus may experience a greater decline in assets than retail money market funds as a result of our primary reforms. We thus anticipate our primary reforms may significantly alter the competitive makeup of the money market fund industry, producing related effects on efficiency and capital formation. We believe, however, that these changes are necessary to accomplish our policy goals.

3. *Effect of Reforms on Investment Alternatives, and the Short-Term Financing Markets*

In this section, we consider the effects of the reforms on investment alternatives, issuers, and the short-term financing markets. We have presented extensive economic analysis relating to our final policy choices and discussed commenters' views in earlier sections of the Release. As such, we focus here on the specific macroeconomic effects of the reforms on investment alternatives, as well as the short-term financing markets and the impact of the reforms on efficiency, competition, and capital formation on issuers in the short-term financing market and the short-term financing market.

We recognized in the Proposing Release that the amendments we are adopting today could create incentives for investors to shift assets out of non-government money market funds, which could lead to changes in the funding of and other effects on the short-term financing markets. Many commenters agreed with our views.[1921] Some commenters, for example, cautioned that a decrease in investor demand for money market funds could limit the availability and raise the cost of short-term funding for businesses, as well as federal, state, and local governments, and that it is currently unclear whether these entities would be able to find and use alternative efficient sources of credit.[1922] Since government funds are not subject to the fees and gates and floating NAV requirements, we disagree that today's adopted amendments have a negative impact on the availability and cost of short-term funding for the federal government. As discussed in the Proposing Release and herein, we believe the effects of a shift, including any effects on efficiency, competition, and capital formation, will depend on the amount of capital reallocated to specific investment alternatives and the nature of the alternatives. More specifically, the extent to which money market fund investors choose to reallocate their assets to investment alternatives, including other money market fund types, as a result of these reforms will drive the effect on the short-term financing markets. We discuss the potential impact of these shifts in investment below.

As discussed in the Proposing Release, because non-government money market funds' investment strategies differ from a number of the investment alternatives enumerated, a shift by investors from non-government money market funds to these alternatives could affect the

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1921 *See, e.g.*, MFDF Comment Letter; Ariz. Ass'n of County Treasurers Comment Letter; Utah Treasurer Comment Letter; Northern Trust Comment Letter; Fidelity Comment Letter.

1922 Form Letter Type E [1] and Type F [1]; Fidelity Comment Letter; Invesco Comment Letter; iMoneyNet Comment Letter; KeyBank Comment Letter; Ass'n Fin. Profs. II Comment Letter; Fin. Svcs. Inst. Comment Letter.

markets for short-term securities. Commenters warned that movement of invested assets from prime money market funds to, for example, government money market funds could skew short-term funding away from private markets to the public sector.[1923] The magnitude of the effect will depend on not only the size of the shift but also the extent to which there are portfolio investment differences between non-government money market funds and the chosen investment alternatives. As discussed in the DERA Study, for example, even a modest shift from prime funds to other types of money market funds could represent a sizeable increase in certain investments.[1924] If instead investors in institutional prime funds choose to manage their cash directly rather than invest in alternative cash management products, they may invest in securities that are similar to those currently held by prime funds, in which the effects on issuers and the short-term financing markets will likely be minimal.[1925]

We believe, and a number of commenters agreed,[1926] that some capital will be reallocated from non-government funds, especially institutional prime funds, to government money market funds. If the magnitude of the flows is large, we anticipate the shift in investment could affect not only the government securities market, but also issuers, including companies and municipalities, that previously sold securities to non-government funds. It is important to note that although investors may reallocate assets to government funds, it is also possible and even

1923 Blackrock II Comment Letter; Invesco Comment Letter; Wells Fargo Comment Letter; U.S. Bancorp Comment Letter; ICI Comment Letter.

1924 *See* DERA Study, *supra* 24, Table 7.

1925 The preference for this alternative, however, may be tempered by the cost to investors of managing cash on their own. *See, e.g., supra* note 580 and accompanying text.

1926 *See, e.g.*, Federated IV Comment Letter; TRACS Financial Comment Letter; Wells Fargo Comment Letter; Boeing Comment Letter; American Bankers Ass'n Comment Letter; Def. Contrib. Inst. Inv. Ass'n Comment Letter. *See also* Dreyfus DERA Comment Letter, Federated DERA I Comment Letter, Fidelity DERA Comment Letter, Invesco DERA Comment Letter, and Wells Fargo DERA Comment Letter.

likely that some will reallocate assets to bank demand deposits and other investment vehicles, which would mitigate the negative impact of the reforms on the short-term funding market in general and bank issuers of short-term papers in particular.[1927]

Commenters cautioned that there is limited market capacity if investors reallocate their assets from non-government money market funds into government money market funds.[1928] Commenters noted a specific concern that reallocating assets from non-government funds to government funds would increase the demand for eligible government securities,[1929] which could reduce these securities' yields in what is already a low-yield environment. Low yields on eligible government securities would not only affect investors in government funds, but also those investors who directly purchase government securities.[1930] Commenters noted heavy flows to government funds during the financial crisis caused several government funds to close to new investors to prevent additional net inflows,[1931] while yields fell close to zero.[1932] These problems arose even with large issuances of government securities during the financial crisis.[1933] One commenter specifically stated that negative yields would be problematic for the competitiveness of government funds and investors, as well as for parties holding government securities for

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1927 *See supra* section III.K.1 of this Release.

1928 *See, e.g.,* Blackrock II Comment Letter; Dreyfus Comment Letter; Federated II Comment Letter; Invesco Comment Letter; Northern Trust Comment Letter; Schwab Comment Letter.

1929 *See supra* section III.C.1.

1930 *See, e.g.,* Federated X Comment Letter; Dreyfus DERA Comment Letter; Federated DERA I Comment Letter; Invesco DERA Comment Letter; Wells Fargo DERA Comment Letter.

1931 *See* Dreyfus DERA Comment Letter; Invesco DERA Comment Letter. The commenters did not address where the potential new investors ultimately invested their assets.

1932 *See* Dreyfus DERA Comment Letter; Federated DERA I Comment Letter.

1933 *See* BlackRock DERA Comment Letter; Invesco DERA Comment Letter; ICI DERA Comment Letter.

regulatory capital and collateral purposes.[1934]

Evidence from the financial crisis also indicates, however, that government funds absorbed large inflows of assets. Specifically, approximately \$498 billion or 24% of assets flowed out of prime funds, whereas \$409 billion or 44% of assets flowed into government funds between September 2, 2008 and October 7, 2008,[1935] and even with these unprecedented reallocations of assets, Treasury-bill rates approached or fell below zero for only a relatively short period during the crisis.[1936] One commenter also noted the supply of Treasury bills has declined by more than \$250 billion on three separate occasions between January 31, 2009 and March 31, 2014 without apparent market dislocation.[1937] We recognize that any reallocation of assets from non-government money market funds into government money market funds may affect yields in the short-run. However, we believe that the two-year period for funds to implement the fees and gates and floating NAV reforms that we are adopting may help facilitate the market adjustment process. For example, fund complexes with non-government funds that have both institutional and retail investors as well as other fund complexes will have time to originate retail funds not subject to the floating NAV requirement to meet the needs of retail clients. Similarly, retail investors in non-government funds that will be subject to the floating NAV after the implementation period will have time to reallocate assets to a retail fund. More generally, investors will have time to identify investment alternatives and consider trade-offs for

1934 *See* Federated DERA I Comment Letter.

1935 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf. These investors would not be government money market funds [5].

1936 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf. These investors would not be government money market funds [6-7].

1937 *See* Fidelity DERA Comment Letter.

alternatives other than government funds.

Commenters, using data from July 2013 through March 2014, estimated there are between \$5.2-\$6.8 trillion in eligible government securities.[1938] However, as noted by several commenters, it is difficult to estimate the amount of assets that institutional investors might reallocate from non-government funds to government funds.[1939] Several commenters cautioned this supply of eligible government securities would likely be insufficient if today's reforms were adopted.[1940] One commenter, however, argued that the supply would be adequate.[1941] This commenter estimated 64% or \$806 billion could shift from prime funds to government funds,[1942] whereas a second commenter estimated 25% of assets in its institutional prime funds would transfer permanently into government funds.[1943] A third commenter estimated between \$500 billion to \$1 trillion.[1944] The first commenter noted, however, that prime funds invested 19.5% of their assets on average in eligible government securities as of February 28, 2014, explaining that prime funds hold eligible government securities to meet the Daily Liquid Asset and Weekly

1938 *See* Federated DERA I Comment Letter; Fidelity DERA Comment Letter; ICI DERA Comment Letter; Wells Fargo DERA Comment Letter. One commenter (*see* the Invesco DERA Comment Letter) estimated eligible government assets were \$2 trillion, which is substantially lower than the other commenters' estimates. It appears the estimate does not include repurchase agreements collateralized by U.S. Treasuries or other government securities and may have other assumptions, so we focus here on the estimates provided in the other four letters.

1939 *See* Federated DERA I Comment Letter and Invesco DERA Comment Letter. *See also supra* sections III.A-B.

1940 *See* BlackRock DERA Comment Letter; Dreyfus DERA Comment Letter; Federated DERA I Comment Letter; Invesco DERA Comment Letter.

1941 *See* Fidelity DERA Comment Letter.

1942 *Id.*

1943 *See* Dreyfus DERA Comment Letter.

1944 *See* Federated DERA I Comment Letter. The commenter did not provide a basis for the estimate in this letter. We note, however, the commenter presented similar estimates using survey data in a previous letter. *See* Federated X Comment Letter. We address limitations of inferences from the survey in section III.B.

Liquid Asset requirements of Rule 2a-7.[1945] As such, they would likely divest some of these assets to meet investor redemption requests, thereby freeing up eligible government securities for government fund purchase. Applying this 19.5% estimate to prime funds at large and assuming investors reallocated 64% of prime fund assets to government funds,[1946] the commenter then estimated the demand for eligible government securities would increase "approximately $806 billion, which is only about 8% of current total available eligible government securities."[1947] The commenter concluded, "the supply of eligible government securities is more than adequate to meet anticipated demand."[1948] We agree with this commenter. Applying the 19.5% estimate to institutional prime funds at large and assuming investors reallocated 25% of prime fund assets to government funds,[1949] the demand for eligible government securities would increase about $239 billion, which is only about 4% of current total available eligible government securities.[1950] Therefore, we do not anticipate the reallocation of fund assets will be large relative to the market for eligible government securities.

1945 *See* Fidelity DERA Comment Letter. The Federated DERA I Comment Letter estimated prime funds invested 27% of assets in eligible government securities. More specifically, the letter stated prime money market funds held $95 billion in Treasury securities, $130 billion in agency securities, and $169 in fully collateralized repurchase agreements. It cited year-end assets in prime money market funds of $1.486 trillion.

1946 *See* Fidelity DERA Comment Letter.

1947 *Id.*

1948 *Id.*

1949 *See* Dreyfus DERA Comment Letter.

1950 *See* Dreyfus DERA Comment Letter. This estimate assumes institutions invest about $1.187 trillion in prime funds. To estimate assets managed by institutional prime funds, we used self-reported fund data from iMoneyNet as of February 28, 2014 to estimate the percentage of assets managed by institutional prime funds. We then multiplied the percentage times the assets managed by prime funds, as provided by Form N-MFP as of February 28, 2014. Commenters, using data from July 2013 through March 2014, estimated there are between $5.2-$6.8 trillion Eligible Government Securities. *See* Federated DERA I Comment Letter; Fidelity DERA Comment Letter; ICI DERA Comment Letter; Wells Fargo DERA Comment Letter.

It is also difficult to estimate the future supply of available eligible government securities, given market forces and possible changes in the supply and demand. Commenters, as well as the staff, noted a number of factors that may affect the supply and demand of eligible government securities.[1951] Some factors would affect the net supply negatively, whereas other factors would affect it positively. Given the large number of possible factors and the range of possible effects of each factor on both the supply of eligible government securities and the economy overall, we cannot estimate the net macroeconomic effect of the factors overall.[1952] For this reason, we discuss these factors qualitatively.

Several factors could increase the future demand for and decrease the future supply of eligible government securities. For example, one commenter discussed the impact of rising interest rates on the demand for money market funds generally and the concomitant increase in demand for eligible government securities.[1953] This commenter suggested, for example, the "eventual resolution of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation will reduce the supply,"[1954] as will a reduction in the federal deficit.[1955] The same commenter noted several factors have increased the demand of government securities, including the stockpiling of securities by the Federal Reserve "as a result of quantitative easing

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1951 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf, pp. [4-5].

1952 We note commenters did not provide data to help the Commission estimate the effects of these factors. *See, e.g.*, BlackRock DERA Comment Letter; Dreyfus DERA Comment Letter; Federated DERA I Comment Letter; Fidelity DERA Comment Letter; Invesco DERA Comment Letter; Wells Fargo DERA Comment Letter.

1953 *See* Federated DERA I Comment Letter.

1954 *Id.*

1955 *Id.*

and other policy initiatives."[1956] The commenter further notes continued trade deficits, structural and regulatory changes in the markets for financial contracts, and regulatory capital and liquidity requirements have increased and are likely to continue increasing the demand for U.S. government securities.[1957] We agree with the commenter that many of these factors will increase the demand for U.S. government securities.[1958]

On the other hand, several factors may decrease the future demand for and increase the future supply of eligible government securities. For example, one commenter hypothesized companies, seeking better investment opportunities, may reduce their holdings of cash equivalents, thereby reducing their holdings of government money market funds and eligible government securities.[1959] This commenter further suggested that central banks might wind down their open market bond purchases, which could cause investors to sell short-term and purchase long-term government securities to earn higher yields. In addition, the commenter suggested that the Federal Reserve Bank of New York through its Overnight Reverse Repo Program might increase government repurchase agreements as part of its quantitative easing exit strategy,[1960] and the Treasury could increase the supply of Treasury Floating Rate Notes designed to be attractive to money market funds and their investors.[1961] Because we cannot foresee all of the ways

1956 *See* Federated DERA I Comment Letter; Invesco DERA Comment Letter.

1957 *See* Federated DERA I Comment Letter; Invesco DERA Comment Letter; Wells Fargo DERA Comment Letter.

1958 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf.

1959 *See* Fidelity DERA Comment Letter.

1960 *See* Fidelity DERA Comment Letter; Federated DERA I Comment Letter. The Federated DERA I Comment Letter notes, however, using the Program to counteract "the unintended consequences of the Commission's reforms may not be an appropriate use, however, of a monetary policy tool," and it may be an unreliable source of supply.

1961 *See* Fidelity DERA Comment Letter.

markets will evolve, we cannot predict the macroeconomic effects of these changes.[1962] Nevertheless, we acknowledge changes in the market arising from the reforms may have macroeconomic effects in the future.

In a separate analysis, the staff noted that some investors that currently own eligible government securities might choose to reallocate these assets to other global safe assets,[1963] which could free up eligible government securities for government fund purchase.[1964] A number of commenters argued the Commission should focus solely on the supply of eligible government securities, given that government funds are largely restricted to investing in eligible government securities.[1965] Several commenters also argued investors other than government funds may be restricted from holding assets other than eligible government securities, which would preclude them from buying other assets.[1966] One commenter pointed out certain global safe assets can present risks, such as foreign exchange risk,[1967] credit risk (securitized assets and investment

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1962 It is important to also note that arguments supporting the idea of a shortfall typically ignore the ability of market participants to adapt to a changing landscape. *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf.

1963 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf. A "safe asset" is defined as any debt asset that promises a fixed amount of money in the future with virtually no default risk. Safe assets are generally considered to be information insensitive: Investors' concerns about asymmetric information or adverse selection are ameliorated when trading because the asset's creditworthiness is known with near certainty, reducing the need for investors to collect information. The safety of a given asset does not depend on the creditworthiness of the issuer alone but also is determined by the liquidity of the market in which the asset trades and by guarantees. Any asset can be rendered safe by an implicit or explicit promise from a central bank or credit-worthy institution to buy it if its price falls below a certain level.

1964 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf. We note government money market funds are largely precluded from investing in securities other than government securities. The market for global safe assets may provide investment alternatives for current investors in government funds and institutional investors invested in non-government funds that are willing to reallocate assets.

1965 *See* Dreyfus DERA Comment Letter; Federated DERA I Comment Letter; Fidelity DERA Comment Letter; ICI DERA Comment Letter; Invesco DERA Comment Letter; Wells Fargo DERA Comment Letter.

1966 *See* Federated DERA I Comment Letter; Wells Fargo DERA Comment Letter.

1967 *Id.*

grade corporate debt),[1968] and commodity risk (gold),[1969] and suggested investors either may not choose to or cannot hold them.[1970] Moreover, this commenter suggested that using global safe assets for regulatory and counterparty purposes may be more expensive than using eligible government securities.[1971]

We recognize that government funds and certain other investors are restricted from investing in assets other than eligible government securities and that other investors may prefer to invest in eligible government securities. As discussed above, commenters estimated there are between \$5.2-\$6.8 trillion of eligible government securities.[1972] Of these, government money market funds today hold about \$959 billion or 16%, which leaves over \$5 trillion or 84% of eligible government securities in the hands of investors that may be able to reallocate their investments in eligible government securities to other assets.[1973] The staff's analysis, which we credit, suggests any shift in demand from eligible government securities to global safe assets more generally would be small relative to the overall supply of global safe assets, which is estimated to be \$74 trillion.[1974] Consistent with this argument, a commenter notes that the entire

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1968 *See* Federated DERA I Comment Letter.

1969 *Id.*

1970 *Id.*

1971 *Id.*

1972 *See* Federated DERA I Comment Letter; Fidelity DERA Comment Letter; ICI DERA Comment Letter; Wells Fargo DERA Comment Letter. One commenter (*see* the Invesco DERA Comment Letter) estimated eligible government assets were \$2 trillion, which is substantially lower than the other commenters' estimates. It appears the estimate does not include repurchase agreements collateralized by U.S. Treasuries or other government securities and may have other assumptions, so we focus here on the estimates provided in the other four letters.

1973 Based on Form N-MFP data as of February 28, 2014, government money market funds had approximately \$959 billion in assets under management.

1974 *See* SEC Staff Analysis http://www.sec.gov/comments/s7-03-13/s70313-324.pdf [3].

market for eligible government securities is less than 10% of the market for global safe assets.[1975] Based on these comments and the staff's analysis, we continue to believe that some investors and market participants may reallocate assets from eligible government securities to other safe assets, which would free up eligible government securities for government fund purchase.

If significant capital flows from institutional prime funds to demand deposits, issuers and the short-term capital markets may be affected. If banks invest the additional capital in the short-term financing markets, we do not anticipate a large impact on issuers or the short-term capital markets. But if they do not, less capital will be available to issuers, which could negatively impact capital formation in the short-term financing market and perhaps increase the cost of short-term financing. In this scenario, however, banks, which tend to fund longer-term lending and capital investments, will have additional monies to invest in the long-term financing market, which could lower the cost of capital for long-term financing and aid capital formation in that market.

Several commenters noted that shifts in assets from institutional prime funds to banks, although reducing systemic risk in money market funds, might increase systemic risk in the banking system.[1976] Some commenters, for example, noted that a shift of assets from money market funds to bank deposits would increase the size of the banking sector and investors' reliance on FDIC-deposit insurance, possibly increasing the concentration of risk in banks.[1977]

1975 *See* Wells Fargo DERA Comment Letter.

1976 *See, e.g.,* Federated X DERA Comment Letter; Fidelity DERA Comment Letter; Invesco DERA Comment Letter; PFM Asset Mgmt. DERA Comment Letter; Reich & Tang DERA Comment Letter; UBS DERA Comment Letter.

1977 *See, e.g.,* Comment Letter of James Angel (Feb. 6, 2013) (available in File No. FSOC-2012-0003) ("Angel FSOC Comment Letter") (stating that "[m]any of the proposed reforms would seriously reduce the attractiveness of money market funds," which "could increase, not decrease, systemic risk as assets move

Several commenters also observed that banks in this scenario would likely need to raise capital to meet capital adequacy standards.[1978] Several commenters discussed the effects of evolving regulations (and related regulatory uncertainty) on banks' willingness to accept large inflows. For example, they noted that pending proposals to increase banks' leverage ratios could limit banks' willingness to accept large cash deposits on their balance sheets, because banks will need to raise large amounts of new capital to reflect the growth in bank assets.[1979] Finally, commenters explained that state and municipal entities might not be able to find banks willing to accept their large deposits due to the high cost of collateralizing public bank deposits, a common requirement among municipalities.[1980]

As discussed above, although we are not able to estimate the flows of capital from institutional prime funds, we do expect some outflow when investors in institutional prime funds weigh the costs and benefits of each investment alternative against the prime fund investment and find an investment alternative a superior allocation. Given the heterogeneity of investors' preferences and investment objectives and constraints, we do not expect that all investors will allocate assets to the same alternative. We expect, for example, that some investors will allocate

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to too-big-to-fail banks."); Comment Letter of Jonathan Macey (Nov. 27, 2012) (available in File No. FSOC-2012-0003) (stating that a "reduced money market fund industry may lead to the flow of large amounts of cash into [the banking system], especially through the largest banks, and increase pressure on the FDIC."); *See, e.g.,* Comment Letter of Federated Investors, Inc. (Jan. 25, 2013) (available in File No. FSOC-2012-0003) ("A floating NAV would accelerate the flow of assets to "Too Big to Fail" banks, further concentrating risk in that sector.").

1978 *See, e.g.,* Federated X Comment Letter; Angel Comment Letter.

1979 *See, e.g.,* Federated X Comment Letter; State Street Comment Letter; American Bankers Ass'n Comment Letter.

1980 *See, e.g.,* Ga. Treasurer Comment Letter; WV Bd. of Treas. Invs. Comment Letter; Chicago Treasurer Comment Letter. The commenters explained that many state and local governments have laws that require their bank deposits to be collateralized by marketable securities at a higher amount than the current $250,000 FDIC deposit insurance limit (often over 100 percent of the deposits after the deduction of the amount of deposit insurance).

assets to government funds, some to demand deposits, and others to various other alternatives. If, however, significant capital flows from prime money market funds to demand deposits, the size of the banking sector will increase. It is uncertain to what extent an increase in the size of the banking sector is a concern. First, banks are highly regulated and attuned to managing and diversifying risks. Second, because the size of the remaining institutional prime funds' portfolios will, in aggregate, be smaller, these portfolios could contain a higher percentage of high-quality prime assets, with improved diversification, and likely could be less susceptible to heavy redemptions. Taken together, it is not clear what the net effect on the resilience of the short-term funding markets will be due to a shift of assets from institutional prime funds to the banking sector.

Historically, money market funds have been a significant source of financing for issuers of commercial paper, especially financial commercial paper, and for issuers of short-term municipal debt.[1981] Analysis of Form N-MFP data from November 2010 through March 2014 indicates that financial company commercial paper and asset-backed commercial paper comprise most of money market funds' commercial paper holdings.[1982] Thus, we acknowledge that a shift by investors from non-government money market funds to other investment

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1981 Based on Form N-MFP data, non-financial company commercial paper, which includes corporate and non-financial business commercial paper, is a small fraction of overall money market holdings. In addition, commercial paper financing by non-financial businesses is a small portion (one percent) of their overall credit market instruments. According to Federal Reserve Board flow of funds data, as of December 31, 2012 non-financial company commercial paper totaled $130.5 billion compared with $12,694.2 billion of total credit market instruments outstanding for these entities. As such, we do not anticipate a significant effect on the market for non-financial corporate fund raising. Federal Reserve Board flow of funds data is available at http://www.federalreserve.gov/releases/z1/Current/z1.pdf.

1982 In addition, according to the DERA Study, *supra* note 24, "as of March 31, 2012, money market funds held $1.4 trillion in Treasury debt, Treasury repo, Government agency debt, and Government agency repo as its largest sector exposure, followed by $659 billion in financial company commercial paper and CDs, its next largest sector exposure."

alternatives could cause a decline in demand for commercial paper and municipal debt, reducing these firms and municipalities' access to capital from money market funds and potentially creating a decline in short-term financing for them.[1983] If, however, money market fund investors shift capital to investment alternatives that demand the same assets as prime money market funds, the net effect on the short-term financing markets should be small.

As discussed in the DERA Study, the 2008-2012 increase in bank deposits coupled with the contraction of money market funds provides data to examine how capital formation can be affected by a reallocation of capital among different funding sources. According to Federal Reserve Board flow-of-funds data, money market funds' investments in commercial paper declined by 45%, or \$277.7 billion, from the end of 2008 to the end of 2012. Contemporaneously, funding corporations reduced their holdings of commercial paper by 99% or \$357.7 billion.[1984] The end result was a contraction of more than 40% or \$647.5 billion in the amount of commercial paper outstanding.

Although the decline in funds' commercial paper holdings was large, it is important to

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1983 *See, e.g.,* Comment Letter of Associated Oregon Industries (Jan. 18, 2013) (available in File No. FSOC-2012-0003) (stating that if the proposed reforms "drive investors out of money market funds, the flow of short-term capital to businesses will be significantly disrupted."); U.S. Chamber FSOC Comment Letter (stating that "any changes [that make money market funds] a less attractive investment will impact the overall costs for issuers in the commercial paper market resulting from a reduced demand in commercial paper."); Comment Letter of N.J. Municipal League (Jan. 23, 2013) (available in File No. FSOC-2012-0003) (stating that "money market funds hold more than half of the short-term debt that finances state and municipal governments for public projects," which could force local governments to "limit projects and staffing, spend more on financing . . . or increase taxes" if such financing was no longer available.); Comment Letter of Government Finance Officers Association, et al. (Feb. 13, 2013) (available in File No. FSOC-2012-0003) (stating that with respect to FSOC's floating NAV proposal, "changing the fundamental feature of money market funds . . . would dampen investor demand for municipal securities and therefore could deprive state and local governments and other borrowers of much-needed capital.").

1984 The Federal Reserve flow of funds data defines funding corporations as "funding subsidiaries, custodial accounts for reinvested collateral of securities lending operations, Federal Reserve lending facilities, and funds associated with the Public-Private Investment Program (PPIP)."

place commercial paper borrowing by financial institutions into perspective by considering its size compared with other funding sources. As with non-financial businesses, financial company commercial paper is a small fraction (3.2%) of all credit market instruments.[1985] We have also witnessed the ability of issuers, especially financial institutions, to adjust to changes in markets. Financial institutions, for example, dramatically reduced their use of commercial paper from $1.1 trillion at the end of 2008 to $449.2 billion at the end of 2012.[1986] As such, we continue to believe that financial institutions, as well as other firms, will be able to identify alternate short-term financing sources if the amount of capital available to purchase financial commercial paper declines in response to our money market fund rule changes.

We recognize, however, that as part of this shift there is the potential that commercial paper issuers may have to offer higher yields to attract alternate investors, which would increase issuers' short-term cost of capital.[1987] Any increase in yield would likely increase demand for these investments which in turn could to some extent mitigate the potential adverse capital formation effects on the commercial paper market. Issuers, facing higher short-term financing costs, might consider the trade-offs of shifting into longer-term sources of financing.

1985 According to the Federal Reserve Flow of Funds data as of December 31, 2012, commercial paper outstanding was $449.2 billion compared with $13,852.2 billion of total credit market instruments outstanding for financial institutions.

1986 The statistics in this paragraph are based on the Federal Reserve Board's Flow of Funds data. *See also* 2012 FSOC Annual Report, *available at* http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf, at 55-56, 66 (showing substantial declines in domestic banking firm's reliance on short-term wholesale funding compared with deposit funding). The Basel III liquidity framework also proposes requirements aimed at limiting banks' reliance on short-term wholesale funding. *See* 2011 FSOC Annual Report, *available at* http://www.treasury.gov/initiatives/fsoc/Documents/FSOCAR2011.pdf, at 90 (describing Basel III's proposed liquidity coverage ratio and the net stable funding ratio); Basel Committee on Banking Supervision: Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (Jan. 2013), *available at* http://www.bis.org/publ/bcbs238.pdf (describing revisions to the liquidity coverage ratio).

1987 *See, e.g.,* Federated X Comment Letter.

To the extent issuers' funding costs rise, whether short or long term, issuers will be less likely to raise capital and invest in projects, possibly affecting capital formation negatively. However, we also note that to the extent that fees and gates slow capital from leaving money market funds during times of stress, the fees and gates amendments adopted today should benefit the short-term funding market. This is because money from maturing portfolio assets may need to be reinvested in the short-term funding market, which may help prevent that market from completely locking up during times of stress as we have experienced during the financial crisis. To that extent, fees and gates may allow issuers to continue accessing the short-term capital market served by money market funds while they identify alternate sources of short-term capital.

Municipalities also could be affected if the new amendments cause the size or number of municipal money market funds to contract. Commenters expressed concern about a loss of funding or other adverse impacts on state and local governments.[1988] As discussed in detail in section III.B, however, we anticipate the impact will likely be relatively small. As of the last quarter of 2013, municipal funds held approximately 7% of the municipal debt outstanding.[1989] Of that 7%, retail investors owned approximately 71% of the assets under management. Even

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1988 A number of commenters argued that applying our floating NAV reform to municipal funds would reduce demand for municipal securities and raise the costs of financing. *See, e.g.*, Fidelity Comment Letter (noting that tax-exempt funds purchase approximately 65% of short-term municipal securities and that fewer institutional investors in tax-exempt funds will lead to less purchasing of short-term municipal securities by tax-exempt funds and a corresponding higher yield paid by municipal issuers to attract new investors); BlackRock II Comment Letter; Federated VII Comment Letter; ICI Comment Letter; U.S. Mayors Comment Letter.

1989 Based on data from Form N-MFP *and* the Federal Reserve Board "Flow of Funds Accounts of the United States" (Z.1), which details the flows and levels of municipal securities and loans, to estimate outstanding municipal debt, (March 6th, 2014), available at http://www.federalreserve.gov/releases/z1/current/z1.pdf. This estimate is consistent with a previous estimate presented in U.S. Securities and Exchange Commission. 2012 *Report on the Municipal Securities Market*. The estimate in the 2012 report was based on data from Mergent's Municipal Bond Securities Database.

though municipal funds will be subject to our fees and gates reforms, we do not anticipate that retail investors in significant numbers will divest their assets in municipal funds because these funds should continue to offer price stability,[1990] yield, and liquidity in all but exceptional circumstances. We therefore anticipate that many retail investors will continue to find municipal funds to be an attractive cash management tool compared to other alternatives.

Of that 7% of municipal debt outstanding that municipal funds held, institutional investors, who might divest their municipal fund assets if they do not want to invest in a floating NAV fund, held approximately 30% of assets.[1991] Because we estimate that institutional municipal funds held approximately 2% of the total municipal debt outstanding, we believe at most approximately 2% is at risk of leaving the municipal debt market.[1992] Of this 2% of the municipal debt market that institutions hold, we anticipate many investors that currently invest in institutional municipal funds likely value the tax benefits of the funds and should choose to continue investing in municipal funds to take advantage of the tax benefits. In addition, we anticipate that some investors who qualify as natural persons and currently are invested in institutional prime funds may reallocate their assets to retail municipal funds, thereby increasing

1990 Retail municipal funds are exempt from the floating NAV requirement adopted today.

1991 *See* Dreyfus II Comment Letter indicated that based on data from iMoneyNet institutional tax-exempt funds represent "approximately $80 billion in assets," which "constitute approximately 30% of the current Municipal MMF industry." Commission staff estimates based on data from Form N-MFP and iMoneyNet as of February 28, 2014 confirm these statistics. To estimate the assets managed by the retail and institutional segments of municipal funds, we used self-reported fund data from iMoneyNet as of February 28, 2014 to estimate percentages. We then multiplied the percentages times the total assets managed by municipal funds, as provided by Form N-MFP as of February 28, 2014. We note the retail designation is self-reported and omnibus accounts in these funds may include both individual and institutional beneficial owners. For these reasons, our estimates may underestimate the number of funds with retail investors. In the Proposing Release, we estimated that retail investors own close to all municipal fund assets. We now recognize retail investors own approximately 71% of municipal fund assets.

1992 This estimate is calculated as follows: Municipal funds hold 7.5% of municipal debt outstanding x 29% of municipal assets held by institutional investors = 2.2% of total municipal debt held by institutions.

investment in retail municipal funds.

Even if municipal funds were to reduce their purchasing of municipal securities, we expect that other investors may fill the gap. Between the end of 2008 and the end of 2012, for example, money market funds decreased their holdings of municipal debt by 34% or $172.8 billion.[1993] Despite this reduction in holdings by money market funds, municipal issuers increased aggregate borrowings by over 4% between the end of 2008 and the end of 2012. Municipalities were able to fill the gap by attracting other investor types. Other types of mutual funds, for example, increased their municipal securities holdings by 61% or $238.6 billion. Depository institutions have also increased their funding of municipal issuers during this time period by $141.2 billion as investors have shifted their assets away from money market funds into bank deposit accounts. Life insurance companies almost tripled their municipal securities holdings from $47.1 billion at the end of 2008 to $121 billion at the end of 2012. Because historically other types of investors have increased their investment in municipal debt when money market funds have decreased their investment, the Commission expects that other investors may again increase their investment in municipal debt if money market funds reduce their funding of the municipal debt market in the future, though we note that yields on municipal securities could rise. For these reasons, we do not anticipate the amendments adopted today will substantially affect capital formation in the municipal debt market.

The amendments we are adopting today, including the floating NAV requirement and enhanced disclosure requirements should improve informational efficiency in the capital markets by increasing investors' ability to knowledgably allocate capital. We recognize,

1993 The statistics in this paragraph are based on the Federal Reserve Board's Flow of Funds data.

however, that a fund's imposition of a liquidity fee increases the cost of reallocating their assets while it is in place, whereas a gate prevents investors from doing so. The additional costs of liquidity and inability of investors to redeem shares may impede the efficient allocation of capital and hence capital formation during periods of market stress because investors will not be able to reallocate capital as freely. We have tried to mitigate the magnitude of this effect by reducing the time that gates are in place to at most 10 business days in any 90-day period (down from the proposed 30 calendar days) and by adopting a 1% default liquidity fee (down from the proposed 2% fee). We also expect that funds will impose fees and gates infrequently.[1994]

Although we recognize that the reallocation of assets by money market fund investors may affect efficiency, competition, and capital formation within the short-term financing markets, the final amendments reflect our efforts to moderate the amount of assets that may be potentially redistributed by limiting our fees and gates requirement to non-government funds and our floating NAV requirement to institutional prime funds. If shareholders either remain in non-government money market funds or move to alternatives that invest in similar underlying assets, the competitive effects are likely to be small. If, however, investors reallocate (whether directly or through intermediaries) investments into substantively different assets, the effects may be larger. In that case, issuers may have to access different investor bases and perhaps offer higher yields to attract capital, whether from the smaller money market fund industry or from other investors. Either way, we recognize that issuers that are unable to offer the required higher yield may have difficulties raising capital, at least in the short-term financing markets.

[1994] As discussed in section III.E, the DERA study found that 2.7% of the funds had their monthly weekly liquid assets percentages fall below 30% and 0.02% of the funds had their monthly weekly liquid assets percentages fall below 10%.

However, as discussed in detail earlier in this section, we can neither precisely estimate the amount of capital that will be reallocated nor its destination.

The Commission anticipates other competitive consequences and effects on capital formation as well. For example, we expect managers of non-government money market funds will have incentives to closely manage weekly liquid assets and principal risk so as to avoid crossing the threshold for triggering fees and gates or having a volatile NAV.[1995] To manage these risks, fund managers will have incentives to hold short-maturity, low-risk securities, and as a result the overall short-term financing markets may tilt toward these issuances. If so, the prices of these securities are likely to rise and yields may fall. We anticipate issuers that are able and willing to issue securities that meet these criteria may gain a competitive advantage over other issuers in the market. Alternatively, the new amendments may create a competitive advantage for issuers of higher yielding and riskier assets that are rule 2a-7-eligible securities if non-government funds pursue more aggressive investment strategies within the confines of rule 2a-7 or if relatively less risk-averse investors avoid government funds and instead invest in non-government funds. If so, issuers of higher-yielding 2a-7-eligible assets may gain a competitive advantage.

The DERA study pointed out that although the 2010 reforms made money market funds more resilient to both portfolio losses and investor redemptions, no fund would have been able to withstand the losses that the Reserve Primary Fund incurred in 2008 without breaking the buck, and nothing in the 2010 reforms would have prevented the Reserve Primary Fund's holding of Lehman Brothers debt. We therefore believe that the costs to participants in the

1995 *See, e.g.*, SIFMA Comment Letter; BlackRock II Comment Letter; Wells Fargo Comment Letter; Peirce & Greene Comment Letter; Dreyfus Comment Letter; Goldman Sachs Comment Letter.

short-term funding market are acceptable relative to the benefits stemming from advancing our goals of reducing money market funds' susceptibility to heavy redemptions, improving their ability to manage and mitigate potential contagion from redemptions, and increasing the transparency of their risks.

L. Certain Alternatives Considered

In this section, we discuss certain reasonable alternatives that we considered as potential other methods for achieving our primary reform goals, as well as a number of other alternatives suggested by commenters, and discuss their benefits as well as their limitations.[1996] The goals of today's reforms include reducing money market funds' susceptibility to heavy redemptions, improving their ability to manage and mitigate potential contagion from such redemptions, and increasing the transparency of their risks, while preserving, as much as possible, the benefits of money market funds. Having considered carefully the trade-offs of the alternatives discussed below, we believe, based on our experience, observations, and analysis, as well as careful consideration of comments received on the adopted reforms and alternatives, that the amendments we are adopting today best effectuate our policy goals.

1. Liquidity Fees, Gates, and Floating NAV Alternatives

In the Proposing Release, we presented a number of reform options. Among them were standalone floating NAV, standalone fees and gates, and a combination of fees, gates, and a floating NAV requirement. Today we are adopting an approach that includes fees and gates for all non-government money market funds, as well as an additional targeted reform of a floating

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1996 This section discusses reasonable alternatives to the primary fees and gates and floating NAV reforms discussed above. We also discuss reasonable alternatives to other rule amendments, as well as more specific or distinct issues, throughout other parts of the Release. For example, *see supra* section III.B.5 for a discussion of alternatives related to decimal place rounding.

NAV for the funds with investors most susceptible to heavy redemptions, institutional prime funds.[1997] We are adopting this approach based on our evaluation, discussed both in other sections of this Release and below, of our policy goals, experience, observations, and analysis, as well as careful consideration of comments received on the following reasonable alternatives.

a. Standalone Liquidity Fees and Redemption Gates

One option outlined in the Proposing Release was for non-government fund boards to be given discretion to impose liquidity fees and permit imposition of redemption gates under certain conditions, but without also requiring a floating NAV for institutional prime money market funds.[1998] We believe a standalone fee option would reduce money market funds' susceptibility to heavy redemptions when liquidity costs are high and fund liquidity is stressed and would allocate liquidity costs to redeeming shareholders, making them pay for the liquidity that they receive, rather than transferring such liquidity costs to remaining shareholders. Gates, in addition to liquidity fees, would help improve the ability of fund managers and boards to manage and mitigate potential contagion from high levels of shareholder redemptions.[1999] A standalone fees and gates requirement would eliminate some of the benefits of money market funds as they exist today for investors, but retain others. Investors would face the possibility of costly redemptions or the elimination of redemptions temporarily when fund liquidity is stressed. On the other hand, fees and gates, as discussed in section III.A and below, would retain the

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1997 We did not propose to apply either the fees and gate or floating NAV reforms to government money market funds, and accordingly the final amendments do not apply to government funds, for the policy reasons discussed in section III.C.1. The analysis of reasonable alternatives below therefore does not focus on the potential effects of these alternatives as applied to government funds.

1998 *See* Proposing Release, *supra* note 25, at section III.B. We note that we have adopted this alternative for a certain subset of funds-namely retail funds that limit their investors to natural persons. We discuss the reasons why we adopted this alternative for retail funds, and the tradeoffs involved, in section III.C.2.

1999 *See* section III.A for a detailed discussion of commenters' responses.

advantages of a stable-price product, avoiding certain issues associated with floating NAV funds. A large number of commenters supported, to varying degrees and with varying caveats, our fees and gates proposal.[2000] Many other commenters, however, expressed their opposition to fees and gates.[2001] We discuss specific comments on fees and gates in detail in section III.A.[2002]

As discussed here and in the Proposing Release, liquidity fees are designed to preserve the current benefits of principal stability, liquidity, and a market yield, but reduce the likelihood that "when markets are dislocated, costs that ought to be attributed to a redeeming shareholder are externalized on remaining shareholders and on the wider market."[2003] Even if a liquidity fee is imposed, fund investors will continue to be able to access liquidity, although at a cost. The ability of fund boards to impose liquidity fees when liquidity costs are high would have many benefits, including reducing the incentives for shareholders to redeem shares when the fees are in effect. Liquidity fees will require redeeming shareholders to bear the liquidity costs associated with their redemptions, rather than transferring those costs to remaining shareholders. Likewise, fees would help reduce investors' incentives to redeem shares ahead of other investors, especially if fund managers deplete their funds' most liquid assets first to meet redemptions, leaving later redemption requests to be met by selling less liquid assets. Liquidity fees would protect fund liquidity by requiring redeeming shareholders to repay funds for the liquidity costs incurred. For these reasons, we believe liquidity fees would reduce money market funds'

2000 *See, e.g.*, Form Letter Type A, Fidelity Comment Letter; Federated V Comment Letter; Northern Trust Comment Letter.

2001 *See, e.g.*, Capital Advisors Comment Letter; Boston Federal Reserve Comment Letter; Americans for Fin. Reform Comment Letter; Edward Jones Comment Letter.

2002 We discuss the trade-offs of standalone fees versus standalone gates in section III.L.1.a below.

2003 *See* Proposing Release, *supra* note 25, n.343.

susceptibility to heavy redemptions when liquidity fees are high and would improve fund managers and boards' ability to manage and mitigate potential contagion from such redemptions.

We also recognize that the possibility of fees and gates being imposed when a fund is under stress may make the risk of investing in money market funds more salient and transparent to some investors, which could sensitize them to the risks of investing in the funds. The disclosure amendments we are adopting today will require funds to provide disclosure to investors regarding the possibility of fees and gates being imposed if a fund's liquidity is significantly stressed. Funds' disclosures that shareholders may face liquidity fees and redemption gates may help inform and could perhaps sensitize some of those investors to some of the risks of investing in money market funds.

Redemption gates would stop heavy redemptions in times of market or fund stress.[2004] Like liquidity fees, gates would preserve the current benefits of money market funds under most market conditions. Funds, however, would be able to use gates to respond to runs by halting redemptions. Gates would provide a "cooling off" period, which might temper the effects of short-term investor panic, possibly reducing investors' incentives to redeem shares. In addition, gates would allow funds to generate additional internal liquidity as assets mature and would reduce or eliminate the likelihood that funds sell otherwise desirable assets and engage in "fire sales." They would also provide time for funds to identify solutions in crises and communicate the nature of any stresses to shareholders.

2004 *See supra* section III.A. We note, however, gates could prompt pre-emptive runs if investors anticipate them. We believe, however, that several aspects of today's amendments mitigate this risk, and the effects of such pre-emptive runs should they occur. For example, board discretion in imposing gates mitigates this risk. We have also tried to mitigate the magnitude of this effect by reducing the time that gates are in place to at most 10 business days in any 90-day period (down from the proposed 30 days) and adopted a 1% default liquidity fee (down from a 2% fee).

Standalone liquidity fees and gates would preserve many of the current benefits of money market funds under normal market conditions. As discussed in the Proposing Release, the ability of funds to impose liquidity fees and redemption gates, had it been available during the financial crisis, might have helped some funds manage the heavy redemptions that occurred and may have helped limit the contagion effects of such redemptions, though it is impossible to know what exactly would have happened if money market funds had operated with fees and gates at that time. Unlike a floating NAV, which affects day-to-day fund pricing, fund boards would impose liquidity fees and gates only when liquidity costs are high and fund liquidity is stressed. In addition, a standalone liquidity fee and redemption gate structure would preserve many of the benefits of stable price money market funds, avoiding many of the costs associated with floating NAV funds.[2005]

The Commission recognizes, however, that liquidity fees and redemption gates address some of the risks associated with money market funds, but cannot address all of the factors that might lead to heavy redemptions in certain money market funds. As discussed previously, we have found that certain money market funds (*i.e.*, institutional prime funds) pose particularly significant risks that fees and gate alone do not fully address.[2006] Specifically, fees and gates are intended to enhance money market funds' ability to manage and mitigate potential contagion from high levels of redemptions and make investors pay their share of the costs of the liquidity that they receive. They do not, however, eliminate the incremental incentive for certain investors

2005 As discussed previously, the Commission acknowledges, for example, some investors may reallocate assets from floating NAV prime funds to either government money market fund or other stable-price alternatives, which may impose costs on investors, funds, and the short-term capital markets. We discuss these effects in more detail in section III.K.

2006 *See supra* section III.B.

to redeem shares ahead of other shareholders when their money market fund's shadow price falls below $1.00—a risk to which institutional prime funds are particularly susceptible, and the potential resultant dilution of remaining shareholders interests. Thus, we believe a liquidity fee combined with a redemption gate—without a floating NAV—will not adequately address this risk of heavy redemptions for institutional prime funds. However, balanced with the competing goal of retaining the benefits of money market funds for investors to the extent possible, as discussed above, we believe that a standalone fees and gates approach does meet our policy goals when applied to retail funds.[2007]

b. Standalone Floating NAV

Another option outlined in the Proposing Release was for institutional prime funds to transact at a floating NAV with no liquidity fees or gates.[2008] Most commenters opposed requiring a standalone floating NAV.[2009] As we discuss in detail in section III.B, we believe a floating NAV requirement reduces certain money market funds' susceptibility to heavy redemptions and improves the allocation of gains, losses, and costs among shareholders. It does not, however, fully address the ability of fund managers and boards to manage and mitigate potential contagion from high levels of shareholder redemptions. A standalone floating NAV requirement would eliminate some of the benefits of a stable-price fund for institutional investors, while retaining other benefits that investors currently experience with money market

2007 The tradeoffs of just a fee or gate (without a floating NAV) are discussed in section III.A. We note that one commenter suggested a "penny rounding" alternative that, if combined with fees and gates, is very similar to the fees and gates alternative we proposed (which included a requirement for penny-rounded pricing). We discuss this alternative at notes 512 - 515 and accompanying text. We are not adopting this suggested "penny rounding" alternative combined with fees and gates for the reasons described in this section III.L.1.a.

2008 *See* Proposing Release, *supra* note 25, at section III.A.

2009 *See supra* section III.B for a detailed discussion of comments we received on this issue.

funds.

First and foremost, we believe a standalone floating NAV would help reduce institutional prime money market funds' susceptibility to heavy redemptions by reducing the incremental incentive for shareholders in these funds to redeem shares ahead of other investors when a fund's shadow NAV falls below $1.00.[2010] As discussed in Section III.B, a floating NAV requirement mandating that institutional prime money market funds transact at share prices that reflect current market-based factors (not amortized cost or penny rounding, as currently is permitted) would lessen investors' incentives to redeem early to take advantage of transacting at a stable value. As a result, the floating NAV requirement by itself without an accompanying liquidity fee and/or redemption gate would help mutualize potential losses and costs among all investors, including redeeming shareholders.[2011]

A standalone floating NAV, which many observers perceive to be more equitable than a stable NAV,[2012] may also minimize investor dilution. A standalone floating NAV should result in redeeming investors receiving only their fair share of the fund when there are embedded losses in the portfolio, thereby avoiding dilution of remaining shareholders. A standalone floating NAV requirement would also preserve certain current benefits of money market funds, because investors would continue to be able to redeem shares during times of market stress without

2010 Although most commenters opposed requiring a floating NAV, a number of commenters did agree that a floating NAV would address this incremental incentive to redeem. *See, e.g.*, Thrivent Comment Letter; TIAA-CREF Comment Letter; Fin. Svcs. Roundtable Comment Letter; SIFMA Comment Letter; Systemic Risk Council Comment Letter. *But see, e.g.*, BlackRock II Comment Letter; Dreyfus Comment Letter; Federated IV Comment Letter; Ropes & Gray Comment Letter; ICI Comment Letter; Chamber II Comment Letter.

2011 *See, e.g.*, Deutsche Comment Letter; TIAA-CREF Comment Letter; Systemic Risk Council Comment Letter.

2012 *See supra* section III.B; *see also* TIAA-CREF Comment Letter.

paying a liquidity fee or waiting for a redemption gate to be lifted. A standalone floating NAV would also avoid certain costs associated with liquidity fees and redemption gates.

We anticipate a standalone floating NAV would contribute to the allocation of money market fund risks in the same ways that a floating NAV does in a combination approach. As discussed in the Proposing Release and in section III.B, a floating NAV requirement is designed to increase the allocation of the risks present in money market funds by causing shareholders to experience gains and losses when a fund's value fluctuates. Some money market fund investors, accustomed to a stable NAV, may not appreciate the risks associated with money market funds whose prices may remain stable, but whose underlying values may fluctuate in times of market stress. As we have discussed previously, transacting at prices based on current market values will help ensure that institutional investors who invest in floating NAV funds do so only if they are willing to tolerate small fluctuations in share price in return for potentially higher yield.[2013] And for those investors who are unwilling to tolerate the risk that the price fluctuations reflect, we anticipate they may reallocate their investments to other, more appropriate alternatives, which may help reduce any redemption pressure that these investors could have caused in times of stress had they remained in the funds.[2014]

A standalone floating NAV would not necessarily eliminate, however, shareholders' incentives to redeem shares from institutional prime money market funds ahead of other investors when liquidity costs are high. In times of severe market stress when the secondary markets for funds' assets become illiquid and liquidity costs are high, investors may still have an

[2013] *See, e.g.* Vanguard Comment Letter.

[2014] *See supra* section III.B.

incentive to rapidly redeem shares before their fund's liquidity dries up. A floating NAV may also not alter institutional prime money market fund shareholders' incentives to redeem shares in times of market stress when investors want to shift from money market funds into securities with greater quality, liquidity, and transparency. As such, when the situation develops, a standalone floating NAV would not necessarily prevent heavy shareholder redemptions in institutional prime money market funds and the related effects on the short-term capital markets or help fund managers and boards manage redemptions.[2015] Thus, a standalone floating NAV would likely be insufficient to satisfy these important policy goals of the money market fund reform.

We have therefore determined to adopt a floating NAV as a targeted reform that is intended to supplement the broader liquidity fees and gates reforms discussed above (as well as other reforms discussed in sections III.E, III.I, and III.J) by addressing the incremental incentive for institutional investors to redeem from prime funds. We believe that an approach that includes both fees and gates for all non-government money market funds as well as a floating NAV for a subset of those funds (i.e., institutional prime money market funds) provides fund managers and boards with targeted and additional tools to manage heavy redemptions and help limit contagion.

c. Fund Choice of Standalone Floating NAV or Standalone Liquidity Fees and Redemption Gates

We also considered providing institutional prime money market funds a choice of either transacting with a floating NAV or being able to impose liquidity fees and gates in times of stress—in other words, each institutional prime money market fund would choose to apply either

2015 We have discussed the particular risks posed by institutional prime funds throughout this Release and especially in section III.B.

the floating NAV alternative or the liquidity fees and gates alternative.[2016] In the Proposing Release, we discussed how providing such a choice might allow each money market fund to select the reform alternative that is most efficient, cost-effective, and preferable to its shareholders. We suggested such a choice might enhance the efficiency of our reforms and minimize costs and competitive impacts.

A number of commenters offered support for this "choice" reform approach,[2017] and one commenter specifically opposed it.[2018] The commenters who supported allowing funds to choose which reform alternative to implement argued that this approach would allow the market to decide which reform was most suitable rather than imposing a top-down solution. They noted that each alternative offers a varying set of benefits and drawbacks and that allowing funds to choose which reform to implement would allow them to offer different kinds of funds to clients who may have divergent priorities for either liquidity or a stable NAV.[2019] These commenters also suggested that letting each fund choose would allow them to select the approach that they can implement at lowest cost and with least disruption. The commenters who supported allowing fund choice between the principal reforms we are adopting today also emphasized they did not support imposing both reforms in combination, only alternatively.[2020] One commenter that supported fund choice nonetheless suggested intermediaries may be unwilling to

[2016] We note that we did not propose to require retail or government funds to adopt a floating NAV, and accordingly this discussion focuses on the tradeoffs between allowing such a choice for institutional prime funds. We discuss the reasons why we are not mandating either a floating NAV or fees and gates for government money market funds, but allowing them to opt in to fees and gates if they choose in section III.C.1 and discuss why we believe that a floating NAV is not necessary for retail funds in section III.C.2.

[2017] Dreyfus Comment Letter; Legg Mason Comment Letter; ICI Comment Letter; MFDF Comment Letter.

[2018] Vanguard Comment Letter.

[2019] *See, e.g.*, ICI Comment Letter; MFDF Comment Letter; SPARK Comment Letter.

[2020] *See, e.g.*, ICI Comment Letter; Dreyfus Comment Letter; Goldman Sachs Comment Letter.

accommodate funds that have two options as they would have to bear the costs of dealing with both sets of reforms for different funds.[2021] The commenter that opposed allowing a choice of structural reforms stated that having both primary structural reforms available could be confusing for investors and may promote regulatory arbitrage.[2022] They argued that the Commission should adopt a standardized structure that is simple for investors to understand.[2023]

We have carefully considered these comments. However, for the same reasons that we believe a standalone approach with either fees and gates or floating NAV would not fully address the risks inherent in money market funds, we believe, based on our consideration of relevant risks and policy objectives, allowing institutional prime money market funds to choose between them also would not address the risks posed by money market funds. As discussed above, the floating NAV alternative by itself would not necessarily eliminate shareholders' incentives to redeem shares from money market funds ahead of other investors when liquidity costs are high. In times of severe market stress when the secondary markets for funds' assets become illiquid and liquidity costs are high, investors may still have an incentive to redeem shares before their fund's liquidity dries up. A floating NAV also may not alter money market fund shareholders' incentives to redeem shares in times of market stress when investors want to shift from money market funds into securities with greater quality, liquidity, and transparency. As such, a floating NAV alternative by itself would not necessarily prevent heavy shareholder redemptions and the related effects on the short-term capital markets or help fund managers and boards manage the rapid heavy redemptions to which institutional prime funds can be susceptible. These funds

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2021 *See* ICI Comment Letter.

2022 *See* Vanguard Comment Letter.

2023 *Id.*

would lack the additional tools of fees and gates to help manage heavy redemptions and limit contagion. Thus, providing institutional prime funds an alternative and having some funds adopt a floating NAV would prevent us from satisfying certain important policy goals of the money market fund reform for those funds.

Some funds might instead choose to adopt the liquidity fees and gates option. However, as discussed above, these funds, while having certain tools to manage heavy redemptions, would have a diminished ability to address an important factor that can lead to redemptions in money market funds. Specifically, fees and gates would not eliminate the incentive for institutional investors to redeem shares ahead of other shareholders to avoid market-based losses embedded in their fund's portfolio or mitigate shareholder dilution. Liquidity fees and gates would not allocate day-to-day gains, losses, and costs to investors on a proportionate basis, a risk that is particularly relevant to institutional prime funds.

In addition, we note that today neither funds nor their investors may necessarily internalize the full likely effects of their own decisions on other funds and investors and the short-term financing markets, and thus capital formation.[2024] The approach that we are adopting today, which subjects all non-government funds to the fees and gates reform and only institutional prime funds to the additional floating NAV requirement, is designed to address these externalities by reducing money market funds' susceptibility to heavy redemptions and improving their ability to manage and mitigate potential contagion from such redemptions. Because allowing institutional prime funds to choose between either a floating NAV or fees and gates would effectively negate the combined effects of the reforms that we have found to be

2024 *See generally* MFDF Comment Letter (discussing, in the context of fees and gates, that boards need not put significant emphasis on the broader systemic effects of their decisions).

necessary to address their risks, we believe that this is not the most appropriate alternative, for the reasons discussed above. For these reasons, we now believe neither liquidity fees and redemption gates nor floating NAV, alone, addresses all of the factors that might lead to heavy redemptions in institutional prime money market funds, and thereby to allow them such a choice would not effectively mitigate all of the risks that our reforms are designed to address.

d. Standalone Fees or Standalone Gates

The amendments we are adopting today will allow funds to impose liquidity fees and redemption gates.[2025] Some commenters on the proposal, however, expressed a preference for either just fees or just gates. For example, some commenters noted a preference for fees over gates.[2026] One commenter argued that liquidity fees could slow runs, as the price for liquidity would be factored into investors' redemption decisions, whereas a gate could exacerbate the risk of pre-emptive runs if investors expect gates to be imposed.[2027] Another commenter stated that although a liquidity fee might be acceptable to shareholders if it reflected the cost of liquidity, gates that prevented investors from accessing their cash would be the least attractive alternative for institutional investors that use money market funds for cash management purposes.[2028]

2025 As discussed in section III.C.1, government funds are not required to impose fees or gates, but may opt to do so if they choose. We believe that if a government fund were to choose to opt into a fee and gate regime, for the same reasons discussed below, such a fund should have the flexibility to use both tools, rather than be limited to just one or the other. We further note that gating is always entirely discretionary (once a fund goes below 30% weekly liquid assets), and that if a board finds that a fee is not in the best interests of the fund need not impose it, and thus a government fund that opted into fees and gates could apply effectively only a fee or only a gate if the boards finds that using only one such tools is in the best interests of the fund.

2026 *See, e.g.*, Deutsche Comment Letter; Capital Advisors Comment Letter.

2027 *See* Deutsche Comment Letter.

2028 *See* Capital Advisors Comment Letter.

Conversely, other commenters expressed a preference for gates over fees.[2029] One commenter noted liquidity fees are unlikely to prevent institutional investors from redeeming shares in a crisis, but that gates would be more likely to achieve the Commission's goals.[2030] Similarly, another commenter described gates as the "most effective option in addressing run risk," but was skeptical as to whether fees "would deter shareholders from redeeming their shares in a time of extreme market stress."[2031] Finally, a commenter suggested implementing only fully discretionary gates but no fees, noting in part that, "establishing appropriate triggers and setting properly sized fees in advance are difficult and likely futile tasks."[2032]

We continue to believe that funds and their boards should be permitted to choose between fees and gates but be capable of utilizing both when determining the best way to address heavy redemptions. As discussed in section III.1 above, fees and gates can accomplish similar policy goals, but one may be better suited to one set of circumstances or funds than the other.[2033] The flexibility in today's amendments should address many of the commenters' concerns in favoring

2029 *See, e.g.,* Fein Comment Letter; Peirce & Greene Comment Letter.

2030 *See* Fein Comment Letter.

2031 *See* U.S. Bancorp Comment Letter.

2032 *See* Peirce & Greene Comment Letter.

2033 As discussed in the Proposing Release, shareholders valuing principal preservation may prefer a redemption gate over a liquidity fee, particularly if the fund expects to rebuild liquidity through maturing assets. In contrast, shareholders preferring liquidity over principal preservation may prefer a liquidity fee because it allows access to that investor's money market fund shareholdings – it just imposes a greater cost for that liquidity if the fund is under stress. *See, e.g.*, Comment Letter of BlackRock, Inc. on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 28, 2012), *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf (stating their preference for liquidity fees over gates "because clients with an extreme need for liquidity can choose to pay for that liquidity in a crisis"); Comment Letter of BNP Paribas on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 25, 2012), available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf (stating that it "would not make sense to restrict the redeemer willing to pay the price of liquidity"); *see also* Capital Advisors Comment Letter.

one approach over the other,[2034] because it gives boards the option to impose fees, gates, neither or both. The flexibility provided in today's amendments will allow funds to tailor the redemption restrictions they employ to market conditions, as well as the preferences and behavior of their particular shareholder base and to adapt restrictions over time as they and the industry gain experience employing such restrictions. Of course, consideration of any such factors would have to be made in the context of the fund's best interests.[2035] The flexibility provided by today's amendments also allows funds to alter their approach as events unfold. For example, if a board determines initially that a liquidity fee is in the best interests of the fund, but the fee turns out to be ineffective in reducing heavy redemptions, the board may then choose to impose a redemption gate. Accordingly, we believe that providing funds and their boards with the flexibility to choose on an ongoing basis between fees and gates best meets our policy goals of reducing money market funds' susceptibility to heavy redemptions and helping funds manage and mitigate potential contagion from such redemptions.

e. Partial Gates

We are adopting amendments to rule 2a-7 that, like the proposal, will allow a fund board to impose a gate on all redemptions, but that will not allow for partial redemption gates.[2036] A number of commenters advocated allowing the board greater discretion to impose partial

2034 *See supra* section III.A.1.c.i addressing pre-emptive run concerns and section III.A.2 addressing concerns with default thresholds and fees. We also note that, to the extent an investor is seeking to invest in a money market fund for cash management purposes and views a fund with the ability to impose a fee or gate as incompatible with cash management, it may alternatively invest in a government money market fund that does not impose fees and gates.

2035 *See* rule 2a-7(c)(i) and (ii).

2036 *See* rule 2a-7(c)(2)(i)(B).

gates.[2037] For example, some commenters noted partial gates would provide investors with some immediate liquidity, but allow funds time to regenerate liquidity or service redemptions under improved market conditions.[2038] In addition, a commenter stated that partial gates would, "make it easier for a board to determine that a gate is in the best interests of the fund because a partial gate would impose a lesser hardship on investors."[2039]

Commenters suggested a variety of approaches for imposing partial gates. For example, a commenter proposed allowing shareholders to redeem "at least 50% of their remaining balance at the then basis-point rounded NAV plus a 1% fee."[2040] Others proposed imposing partial gates with greater restrictions on shareholders making larger redemptions and lower or no restrictions on shareholders making smaller redemptions.[2041] Another commenter suggested limiting redemptions to 10% of outstanding shares per day and applying this limitation *pro rata* among all redeeming shareholders that day, with the balance of unredeemed shares carried to the next day until all redemption requests have been met.[2042] In contrast, other commenters were opposed to the idea of partial redemption gates, citing significant operational challenges and costs,[2043] as

2037 *See, e.g.*, Wilmington Trustees Comment Letter; UBS Comment Letter; Chamber II Comment Letter; ABA Business Law Section Comment Letter; *see also* Comment Letter of HSBC Global Asset Management on the European Commission's Green Paper on Shadow Banking (May 28, 2012) (stating that a money market fund should be able to limit the total number of shares that the fund is required to redeem on any trading day to 10% of the shares in issue, that any such gate be applied pro rata to redemption requests, and that any redemption requests not met be carried over to the next business day and so forth until all redemption requests have been met).

2038 *See, e.g.*, Wilmington Trustee Comment Letter; ABA Business Law Section Comment Letter; Deutsche Comment Letter.

2039 *See* ABA Business Law Section Comment Letter.

2040 *See* Capital Advisors Comment Letter.

2041 *See* UBS Comment Letter; Chamber II Comment Letter.

2042 *See* HSBC Comment Letter.

2043 *See* Fidelity Comment Letter; Fin. Info. Forum Comment Letter; Federated V Comment Letter.

well as the potential for arbitrary and inconsistent application among funds and inequitable treatment among shareholders.[2044]

We have determined not to permit partial redemption gates under amended rule 2a-7. An important policy goal of this reform is to improve funds' ability to manage and mitigate potential contagion from such redemptions. Partial gates do not fully stop runs, because shareholders can continue to redeem shares. Although board discretion to impose partial gates may be effective for individual funds, it may not address our larger concerns about contagion resulting from rapid heavy redemptions. There may exist times when full gates are required to limit the contagion effects of heavy redemptions on remaining investors and the short-term financing markets, but individual firms may choose instead to impose partial gates. We also note that a number of commenters opposed partial gates, noting significant operational challenges and costs, which are not associated with full gates.[2045] We also believe the benefits of allowing partial gating is further diminished now that we are adopting only a 10 business day maximum gate period, because 10 business days (rather than the 30-day gate under the proposal) may be a more reasonably manageable period of time during which investors may not need the safety valve that a partial gate might afford.

There are several additional potential issues with partial gates. First, we understand it may be difficult for funds to achieve desired outcomes with partial gates, and partial gates may create unintended consequences. For example, when a Florida LGIP suspended redemptions in 2007 in response to a run, it re-opened with a combined partial gate and liquidity fee – local

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2044 *See* Fidelity Comment Letter.

2045 *See, e.g.,* Fidelity Comment Letter; Fin. Info. Forum Comment Letter; Federated V Comment Letter.

governments could take out the greater of 15% of their holdings or $2 million without penalty, and the remainder of any redemptions was subject to a 2% redemption fee.[2046] We understand that investors redeemed most of what was allowed under the partial gate without triggering the redemption fee, which meant the partial gate not only did not stop the run, but may have triggered redemptions up to that limit.[2047]

Second, partial gates based on the size of redemptions may also be easily manipulated unless appropriate, but costly and complex, procedures are put in place to prevent such gaming. For example, a partial gate that allowed small redemptions could result in investors redeeming small amounts over a number of days, essentially achieving large redemptions through multiple smaller redemption transactions.[2048] Funds could prevent this sort of gaming by limiting each shareholder's redemptions to a certain amount, but this type of restriction would only serve to increase the costs and complexity of such a gate. Third, a partial gate based on the size of redemptions could effectively exempt certain types of funds and their shareholders (*e.g.*, retail funds and their shareholders) from a gating requirement.

Fourth, we also believe partial gates would complicate the fees and gates requirements as an operational matter. If partial gates were assessed on a redemption-by-redemption basis (*e.g.*, the size of a shareholder's redemption), we believe, as one commenter stated, "[t]he systems enhancements necessary to track holdings for purposes of determining each shareholder's

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2046 *See* David Evans and Darrell Preston, *Florida Investment Chief Quits; Fund Rescue Approved*, BLOOMBERG (Dec. 4, 2007).

2047 *See, e.g.*, Neil Weinberg, *Florida Fund Meltdown: Bad to Worse*, Forbes (Dec. 6, 2007) (noting that investors withdrew $1.2 billion from the $14 billion pool after it re-opened, while depositing only $7 million, but that only 3 out of about 1,700 participants in the pool withdrew assets subject to the redemption fee).

2048 *See supra* section III.A.1.c herein discussing gaming of redemption restrictions.

redemption limit would be more complicated, cumbersome, and costly than the changes required to implement the full gate."[2049] Similarly, complexity would be compounded by the existence of omnibus accounts, as funds would need to track all redemptions made by a single investor through multiple accounts over the course of a day to prevent investors from making redemptions in excess of the limit imposed by a partial gate in a single day by spreading them over multiple omnibus accounts.

f. In-Kind Redemptions

As discussed in the Proposing Release, we requested comment in 2009 on a potential amendment that would require funds to satisfy redemption requests in excess of a certain size through in-kind redemptions.[2050] We also requested comment on this type of redemption restriction when we requested comment on the PWG Report.[2051] Almost all commenters on the PWG alternative opposed it.[2052] Most commenters believed that requiring in-kind redemptions would be technically unworkable due to the complex valuation and operational issues that would be imposed on both the fund and on investors receiving portfolio securities.[2053] Several commenters stated that investors would dislike the prospect of receiving redemptions in-kind and

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2049 *See* Fidelity Comment Letter.

2050 *See* 2009 Proposing Release, *supra* note 66, at section III.B; PWG Report, *supra* note 506, at section 3.c. An in-kind redemption occurs when a shareholder's redemption request to a fund is satisfied by distributing to that shareholder portfolio assets of that fund instead of cash. In-kind redemptions might lessen the effect of large redemptions on remaining money market fund shareholders, and they would ensure that the redeeming investors bear part of the cost of their liquidity needs. During the financial crisis, one money market fund stated that it would honor certain large redemptions in-kind in an attempt to decrease the level of redemptions in that fund. *See* 2009 Proposing Release, *supra* note 66, at n.30.

2051 *See* PWG Report, *supra* note 506, at section 3.c (discussing requiring that money market funds satisfy certain redemptions in-kind).

2052 *But see* Proposing Release, *supra* note 25 at n.472.

2053 *See* Proposing Release, *supra* note 25 at 233-34 n.473. They also asserted that required in-kind redemptions could result in disrupting, rather than stabilizing, markets if redeeming shareholders needing liquidity were forced to sell into declining markets. *See* Proposing Release, *supra* note 25, at n.474.

would structure their holdings to avoid the requirement, but would nevertheless still collectively engage in redemptions if the money market funds were to come under stress with similar adverse consequences for the funds and the short-term financing markets.[2054]

In connection with the current reforms, we again asked for comment regarding possible in-kind redemption restrictions. Two commenters noted the complexity of implementing this mechanism.[2055] One of these commenters suggested that the Commission permit, but not require, money market funds to meet redemptions by returning a *pro rata* share of the fund's assets rather than cash to investors.[2056] In light of these comments and comments we previously received, we continue to believe requiring in-kind redemptions could create operational difficulties that might prevent funds from treating investors fairly in practice. In contrast, we anticipate reforms such as liquidity fees and gates would fulfill many of our policy goals in a manner that is operationally simpler and potentially fairer to investors than in-kind redemptions.

We also note requiring in-kind redemptions would not necessarily stop runs and the related adverse effects on the short-term financing markets and capital formation. Rather, we believe the liquidity fees and gates approach described in section III.A would better achieve our policy goals, including improving money market funds' ability to manage and mitigate potential contagion from high levels of redemptions and helping to preserve the benefits of money market funds for investors and the short-term financing markets for issuers. We note that money market funds are already permitted to satisfy redemptions in kind if they disclose such a possibility in

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2054 *See* Proposing Release, *supra* note 25 at n.475.

2055 *See* State Street Comment Letter ("State Street agrees with commenters that requiring in-kind redemptions would be unworkable due to the complex valuation and operational issues that would be imposed on both the fund and on investors receiving portfolio securities."); HSBC Comment Letter.

2056 *See* HSBC Comment Letter.

the fund's prospectus.[2057]

g. Standalone Floating NAV Combined with only Liquidity Fees or Redemption Gates

The Commission also considered combining a floating NAV with either a liquidity fee or a redemption gate; that is, we considered an alternative where money market funds would be required to maintain a floating NAV combined with a liquidity fee but not a redemption gate and an alternative where money market funds would be required to maintain a floating NAV combined with a redemption gate but not a liquidity fee. Combining a floating NAV with just a liquidity fee or just a redemption gate would simplify the operational implementation of the rule and perhaps make money market funds more attractive to investors.

These more limited combinations, however, would likely fail to achieve the policy goals of the money market fund reform to the same extent as the full set of reforms that we are adopting today. Without liquidity fees, there would be heightened incentives for shareholders to redeem in times of market stress before fund managers deplete their funds' liquidity to meet redemptions. The costs of providing liquidity to redeeming shareholders would fall on non-redeeming shareholders, creating a financial inequity between shareholder types.

Similarly, without the possibility of imposing gates, funds would lose an important tool to manage redemptions during periods of stress. They would not be able to fully halt redemptions, which could affect funds' ability to generate internal liquidity as assets mature, perhaps undermining capital formation. Losing the time necessary to generate internal liquidity

2057 *See* section 2(a)(32) (defining a redeemable security as a security where the holder is entitled ... to receive approximately his proportionate share of *the issuer's current net assets*, or the cash equivalent thereof (italics added)). *See also* rule 18f-1, which provides an exemption from certain prohibitions of section 18(f)(1) of the Act with regard to redemptions in kind and in cash.

would increase the likelihood funds would have to sell desirable assets, perhaps at "fire sale" prices. Funds would not have as much time to identify solutions and communicate with investors as they would with gates. They would also lose the ability to create a "cooling off" period, which might temper the effects of short-term investor panic, possibly reducing investors' incentives to redeem shares.

Precommiting to either a combination of a floating NAV and fees or a combination of a floating NAV and gates would reduce funds' ability to manage heavy redemptions relative to having a floating NAV and both fees and gates. In addition, it would limit boards' ongoing discretion to address potential problems. A fund's optimal response to managing heavy redemptions would likely depend on its particular circumstance, market conditions, and the appropriateness of imposing a fee or gate. As discussed in section III.A above, we believe funds are likely to first impose fees in times of market stress and then to impose gates, but only if fees fail to control redemptions. That said, the managers of a fund that experiences a credit event in an otherwise healthy economy might instead choose to gate their fund to staunch redemptions, forgoing a liquidity fee because liquidity costs are low. By forcing funds to precommit to fees or gates (along with a floating NAV), this alternative limits funds' ability to manage and mitigate potential contagion from such redemptions.

2. *Alternatives in the FSOC Proposed Recommendations*

As discussed in the Proposing Release, we considered a number of alternatives for regulatory reform, including the reforms proposed by FSOC. We received comment on several of these alternatives. After considering the comments that FSOC received on their proposed reforms (the "FSOC Proposed Recommendations"), as well as the comments we received on the

Proposing Release and the economic analysis set forth in this Release, we have concluded that these alternatives generally would not achieve our regulatory goals as well as the reforms we are adopting today. We are, however, today adopting a floating NAV for institutional funds, which was one proposed reform included in the FSOC Proposed Recommendations. We discuss below these options, and our principal reasons for not adopting them (other than the floating NAV for institutional prime money market funds).

In November 2012, the FSOC proposed to recommend that we undertake structural reforms of money market funds. FSOC proposed three alternatives for consideration, which, it stated, could be implemented individually or in combination. The first option[2058]—requiring that money market funds use a floating NAV—is one of the reforms we are adopting today for institutional prime money market funds. We discuss this option in section III.B below. The other two options in the FSOC Proposed Recommendations each would require that money market funds maintain a NAV buffer, or a specified amount of additional assets available to absorb daily fluctuations in the value of the fund's portfolio securities. One option would require that most money market funds have a risk-based NAV buffer of up to 1% to absorb day-to-day fluctuations in the value of the funds' portfolio securities and allow the funds to maintain a stable NAV and that this NAV buffer be combined with a "minimum balance at risk."[2059] The required minimum size of a fund's NAV buffer would be determined based on the composition of the money market fund's portfolio according to the following formula:

2058 *See* FSOC Proposed Recommendations, *supra* note 1562, at section V.A.

2059 Under the FSOC Proposed Recommendations, Treasury money market funds would not be subject to a NAV buffer or a minimum balance at risk. *See* FSOC Proposed Recommendations, *supra* note 1562, at sections V.B and V.C for a full discussion of these two alternatives. This section of the Release provides a summary based on those sections of the FSOC Proposed Recommendation.

- No buffer requirement for cash, Treasury securities, and repos collateralized solely by cash and Treasury securities ("Treasury repo");
- A 0.75% buffer requirement for other daily liquid assets (or weekly liquid assets, in the case of tax-exempt money market funds); and
- A 1% buffer requirement for all other assets.

A fund whose NAV buffer fell below the required minimum amount would be required to limit its new investments to cash, Treasury securities, and Treasury repos until its NAV buffer was restored. A fund that completely exhausted its NAV buffer would be required to suspend redemptions and liquidate or could continue to operate with a floating NAV indefinitely or until it restored its NAV buffer.

A money market fund could use any funding method or combination of methods to build the NAV buffer, and could vary these methods over time. The FSOC Proposed Recommendations identified three funding methods that would be possible with Commission relief from certain provisions of the Investment Company Act: (1) an escrow account that a money market fund's sponsor established and funded and that was pledged to support the fund's stable share price; (2) the money market fund's issuance of a class of subordinated, non-redeemable equity securities ("buffer shares") that would absorb first losses in the funds' portfolios; and (3) the money market fund's retention of some earnings that it would otherwise distribute to shareholders (subject to certain tax limitations).[2060] We believe that the first funding method would be the most likely approach for funding the buffer given the complexity of a fund

[2060] *See* FSOC Proposed Recommendations, *supra* note 1562, at section V.B.

offering a new class of buffer shares (and the uncertainty of an active, liquid market for buffer shares developing) and the tax limitations on the third method.[2061] We note, however, that we believe this funding method is the most expensive of the three because of the opportunity costs the fund's sponsor would bear to the extent that the firms redirect this funding from other essential activities, as further discussed below.[2062]

The minimum balance at risk ("MBR") would require that the last 3% of a shareholder's highest account value in excess of $100,000 during the previous 30 days (the shareholder's MBR or "holdback shares") be redeemable only with a 30-day delay.[2063] All shareholders may redeem 97% of their holdings immediately without being restricted by the MBR. If the money market fund suffers losses that exceed its NAV buffer, the losses would be borne first by the MBRs of shareholders who have recently redeemed (*i.e.*, their MBRs would be "subordinated"). The extent of subordination of a shareholder's MBR would be approximately proportionate to the

2061 Under the Internal Revenue Code, each year, mutual funds, including money market funds, must distribute to shareholders at least 90% of their annual earnings or lose the ability to deduct dividends paid to their shareholders. *See, e.g.*, Comment Letter of the Investment Company Institute (May 16, 2012) (available in File No. 4-619). We note that the retained earnings method is similar to how some money market funds paid for insurance that was provided by ICI Mutual Insurance Company from 1993 to 2003. This insurance covered losses on money market fund portfolio assets due to defaults and insolvencies but not from events such as a security downgrade or a rise in interest rates. Coverage was limited to $50 million per fund, with a deductible of the first 10 to 40 basis points of any loss. Premiums ranged from 1 to 3 basis points. *See* PWG Report, *supra* note 506, at n.24 and accompanying text. Because of the tax disadvantages of this funding method, it would take a long time for a NAV buffer of any size to build, particularly in the current low interest rate environment.

2062 This funding method also could have the greatest competitive impacts on the money market fund industry, as larger bank-affiliated sponsors would have less costly access to funding for the NAV buffer than independent asset management firm sponsors. *See, e.g.*, Comment Letter of The Systemic Risk Council (Jan.18, 2013) (available in File No. FSOC 2012–0003) ("Systemic Risk Council FSOC Comment Letter") ("Capital requirements would likely encourage money market fund consolidation—particularly toward larger bank-affiliated sponsors (who traditionally have, and can access, more capital than traditional, independent asset managers). If so, this could further concentrate systemic risk from these institutions, and create conflicts of interest in the short-term financing markets (as fewer money funds would control a larger share of the short-term lending markets.")).

2063 *See* FSOC Proposed Recommendations, *supra* note 1562, at section V.C.

shareholder's cumulative net redemptions during the prior 30 days—in other words, the more the shareholder redeems, the more their holdback shares become "subordinated holdback shares."

The last option in the FSOC Proposed Recommendations would require money market funds to have a risk-based NAV buffer of up to 3% (which otherwise would have the same structure as discussed above), and this larger NAV buffer could be combined with other measures.[2064] The other measures discussed in the FSOC Proposed Recommendations include more stringent investment diversification requirements (which we are generally adopting, as discussed in section III.I above), increased minimum liquidity levels (which we are not adopting), and more robust disclosure requirements (which we are generally adopting, as discussed in sections III.E and III.F above).[2065]

In the sections that follow, we discuss our evaluation of a NAV buffer requirement and an MBR requirement for money market funds. We also discuss comments FSOC received on these recommendations, and that we received on the Proposing Release. As we discuss in more detail below, the Commission is not pursuing these alternatives because we continue to believe that the imposition of either a NAV buffer combined with a minimum balance at risk or a stand-alone NAV buffer, while advancing some of our goals for money market fund reform, might prove costly for money market fund shareholders and could result in a contraction in the money

[2064] *See id*, at section V.C.

[2065] The FSOC Proposed Recommendations asked the Commission to consider increasing minimum weekly liquidity requirements from 30% of total assets to 40% of total assets. The justification provided by FSOC was that most funds already have weekly liquidity in excess of this 40% minimum level. We are not adopting this alternative. There is no evidence that current liquidity requirements are inadequate, and several commenters agreed. *See, e.g.*, ICI Comment Letter, U.S. Bancorp Comment Letter, Federated Comment Letter. For example, the DERA Study notes that the heightened redemption activity in the summer of 2011 did not place undue burdens on MMFs when they sold assets to meet redemption requests. No fund lost more than 50 basis points during this period nor did their shadow NAVs deviate significantly from amortized cost. *See* DERA Study, *supra* note 24. We have therefore determined not to address additional minimum liquidity requirements at this time.

market fund industry that could harm the short-term financing markets and capital formation to a greater degree than the reforms we are adopting today.

a. NAV Buffer

Several commenters expressed support for a NAV buffer (which we did not propose), although no commenters explicitly discussed an opposition to such a buffer as part of their comments on this proposal.[2066] In particular, two commenters argued that a capital buffer would reduce the incentives for a fund to take excessive risk and for investors to run.[2067] As discussed in the Proposing Release, in considering a NAV buffer such as those recommended by FSOC as a potential reform option for money market funds, we considered the benefits that such a buffer could provide, as well as its costs. Our evaluation of what could be a reasonable size for a NAV buffer also factored into our analysis of the advantages and disadvantages of these options. A buffer can be designed to satisfy different potential objectives. A large buffer could protect shareholders from losses related to defaults, such as the one experienced by the Reserve Primary Fund following the Lehman Brothers bankruptcy. However, if complete loss absorption is the objective, a substantial buffer would be required, particularly given that money market funds can hold up to 5% of their assets in a single security.[2068]

2066 *See, e.g.,* Americans for Fin. Reform Comment Letter; Comment Letter of Dorothy B. Sherry (Sept. 21, 2013) ("Sherry Comment Letter"); Occupy the SEC Comment Letter. However, many commenters opposed a NAV buffer when included as an alternative in the FSOC recommendation. *See, e.g.* Comment Letter of Invesco Ltd. (Feb. 15, 2013) (available in File No. FSOC–2012–0003) ("Invesco FSOC Comment Letter"); Blackrock FSOC Comment Letter; Comment Letter of Independent Directors Council (Jan. 23, 2013) (available in File No. FSOC–2012–0003) ("IDC FSOC Comment Letter").

2067 *See, e.g.,* Hanson *et al.* Comment Letter; Squam Lake Comment Letter.

2068 Even commenters in favor of a buffer showed concern that FSOC's proposed buffer size of 1% or 3% may be inadequate. *See, e.g.,* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 47 ("For a poorly diversified fund with portfolio assets that carry relatively more credit risk, a 3% (maximum) NAV buffer may not be sufficient."); Harvard Business School FSOC Comment Letter, *supra* note 47 ("For a well-diversified portfolio, we estimate that MMFs should hold 3 to 4% capital against unsecured paper

Alternatively, if a buffer were not intended for complete loss absorption, but rather designed primarily to absorb day-to-day variations in the market-based value of money market funds' portfolio holdings under normal market conditions, this would allow a fund to hold a significantly smaller buffer. Accordingly, the relatively larger buffers contemplated in the FSOC Proposed Recommendations[2069] must have been designed to absorb daily price fluctuations as well as relatively large security defaults.[2070] In fact, a 3% buffer would accommodate all but extremely large losses, such as those experienced during the crisis. However, a buffer that was designed to absorb such large losses may be too high and too costly because the opportunity cost of this capital would be borne at all times even though it was likely to be drawn upon to any

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issued by financial institutions, the primary asset held by MMFs. For more concentrated portfolios, we estimate that the amount of capital should be considerably higher."); Better Markets FSOC Comment Letter, *supra* note 59 ("The primary shortcoming of [FSOC's proposed buffer] is its low level of 1 or 3 percent.... [Any buffer] must be set at a level that is sufficient to cover all of these factors: projected and historical losses; additional costs in the form of liquidity damages or government backstops; and investor psychology in the face of possible financial shocks or crises. [....] Historical examples alone...indicate that MMF losses have risen as high as 3.9 percent. This serves only as a floor regarding actual potential losses, clearly indicating that the necessary buffer must be substantially higher than 3.9 percent."); Comment Letter of Occupy the SEC (Feb. 15, 2013) (available in File No. FSOC–2012–0003) ("Occupy the SEC FSOC Comment Letter"), *supra* note 52 (arguing that FSOC's proposed buffer does not go far enough in accounting for potential risks in a fund's portfolio. Instead, the approach should be a two-layer buffer, with a first layer of up to 3% depending on the portfolio's credit rating and a second layer to be sized according to the concentration of the portfolio).

2069 While the second alternative in the FSOC Proposed Recommendation only includes a NAV buffer of up to 1%, it was combined with a 3% MBR, which would effectively provide the fund with a 4% buffer before non-redeeming shareholders in the fund suffered losses.

2070 For example, beginning in September 2008, money market funds that chose to participate in the Treasury Temporary Guarantee Program were required to file with the Treasury their weekly shadow price if it was below $0.9975. Our staff has reviewed the data, and found that through October 17, 2008, only three funds carried losses larger than four percent, and only five funds carried losses larger than three percent. Reported shadow prices excluded the value of any capital support agreements in place at the time, but in some cases included sponsor-provided capital contributions to the fund. Not every money market fund that applied to participate in the program reported shadow price data for every day during the period between September 1, 2008 and October 17, 2008. *See also* Patrick E. McCabe *et al.*, *The Minimum Balance at Risk: A Proposal to Mitigate the Systemic Risks Posed by Money Market Funds*, at 31, Table 2 Federal Reserve Bank of New York Staff Report No. 564, July 2012 (providing additional statistical analysis of shadow price information reported by money market funds filing under the Treasury Temporary Guarantee Program). During that period there were over 800 money market funds based on Form N-SAR data.

degree only rarely. Two commenters disagreed, noting that a capital buffer in the range of three to four percent would reduce yields for ordinary investors by about five basis points.[2071] However, another commenter asserted that a capital buffer would have a much more dramatic effect on yields by effectively turning prime money market funds into synthetic Treasury funds.[2072] Accordingly, as we discuss below, a buffer of the size contemplated by either alternative in the FSOC Proposed Recommendations appears to be too costly to be practicable.[2073]

i. Benefits of a NAV Buffer

As discussed in the Proposing Release, the FSOC Proposed Recommendations discusses a number of potential benefits that a NAV buffer could provide to money market funds and their investors, many of which we discuss below.[2074] As noted by commenters, it would preserve money market funds' stable share price and potentially increase the stability of the funds, but would likely reduce the yields (and in the option that combines a 1% NAV buffer with an MBR, the liquidity) that money market funds currently offer to investors.[2075] Like the reforms we are adopting today, the NAV buffer presents trade-offs between stability, yield, and liquidity.

2071 *See* Americans for Fin. Reform Comment Letter; Squam Lake Comment Letter.

2072 *See* Craig M. Lewis, *The Economic Implications of Money Market Fund Capital Buffers* (Nov. 2013), *available at* http://www.sec.gov/divisions/riskfin/workingpapers/rsfi-wp2014-01.pdf ("Lewis").

2073 There is another potential adverse effect of requiring large NAV buffers for money market funds to address risk from systemic events. According to the FSOC Proposed Recommendations, outflows from institutional prime money market funds following the Lehman Brothers bankruptcy tended to be larger among money market funds with sponsors that were themselves under stress, indicating that investors redeemed shares when concerned about sponsors' potential inability to support ailing funds. But these sponsors were the ones most likely to need funding dedicated to the buffer for other purposes. As a result, larger buffers may negatively affect other important activities of money market fund sponsors and cause them to fail faster.

2074 *See* FSOC Proposed Recommendations, *supra* 1562, at section V.B.

2075 *See* Americans for Fin. Reform Comment Letter; Squam Lake Comment Letter.

In effect, depending on the size of the buffer, a buffer could provide various levels of coverage of losses due to both the illiquidity and credit deterioration of portfolio securities. Money market funds that are supported by a NAV buffer would be more resilient to redemptions and credit or liquidity changes in their portfolios than stable value money market funds without a buffer (the current baseline).[2076] As long as the NAV buffer is funded at necessary levels, each $1.00 in money market fund shares is backed by $1.00 in fund assets, eliminating the incentive of shareholders to redeem at $1.00 when the market-based value of their shares is worth less. This reduces shareholders' incentive to redeem shares quickly in response to small losses or concerns about the quality and liquidity of the money market fund portfolio, discussed in section II.B above, particularly during periods when the underlying portfolio has significant unrealized capital losses and the fund has not broken the buck. As long as the expected effect on the portfolio from potential losses is smaller than the NAV buffer, investors would be protected—they would continue to receive a stable value for their shares.

A second benefit is that a NAV buffer would force money market funds to provide explicit capital support rather than the implicit and uncertain support that is permitted under the current regulatory baseline. This would require funds to internalize some of the cost of the discretionary capital support sometimes provided to money market funds and to define in advance how losses will be allocated. In addition, as noted by commenters, a NAV buffer could reduce fund managers' incentives to take risk beyond what is desired by fund shareholders because investing in less risky securities reduces the probability of buffer depletion.[2077]

2076 *See, e.g.*, Occupy the SEC FSOC Comment Letter, *supra* note 52.

2077 *See, e.g.*, Harvard Business School FSOC Comment Letter, *supra* note 47 ("Capital buffers also mean that there is an investor class that explicitly bears losses and has incentives to curb ex ante risk taking.");

Another potential benefit is that a NAV buffer might provide counter-cyclical capital to the money market fund industry. This is because once a buffer is funded it remains in place regardless of redemption activity. With a buffer, redemptions increase the relative size of the buffer because the same dollar buffer now supports fewer assets.[2078] As an example, consider a fund with a 1% NAV buffer that experiences a 25 basis point portfolio loss, which then triggers redemptions of 20% of its assets. The NAV buffer, as a proportion of fund assets and prior to any replenishment, will increase from 75 basis points after the loss to 93.75 basis points after the redemptions. This illustrates how the NAV buffer strengthens the ability of the fund to absorb further losses, reducing investors' incentive to redeem shares. This result contrasts to the current regulatory baseline under rule 2a-7 where redemptions amplify the impact of losses by distributing them over a smaller investor base. For example, suppose a fund with a shadow price of $1.00 (*i.e.*, no embedded losses) experiences a 25 basis point loss, which causes its shadow price to fall to $0.9975. If 20% of the fund's shares are then redeemed at $1.00, its shadow price will fall to $0.9969, reflecting a loss that is 24% greater than the loss precipitating the redemptions.

Finally, by allowing money market funds to absorb small losses in portfolio securities without affecting their ability to transact at a stable price per share, a NAV buffer may facilitate and protect capital formation in short-term financing markets during periods of modest stress.

Americans for Fin. Reform Comment Letter; Hanson *et al.* Comment Letter; and Squam Lake Comment Letter.

2078 *See, e.g.*, Comment Letter of J.P. Morgan Asset Management (Jan. 14, 2013) (available in File No. FSOC–2012–0003) ("J.P. Morgan FSOC Comment Letter") ("[W]here capital support is utilized as a first loss position upon liquidation, the level of capital can be tied to a MMF's highest asset levels. This can result in a structure whereby, as redemptions accelerate and cause the unrealized loss per share to increase further, the amount of capital support available per share increases accordingly, providing further capital support to the remaining shareholders that do not redeem their shares.").

Currently, money market fund portfolio managers are limited in their ability to sell portfolio securities when markets are under stress because they have little ability to absorb losses without causing a fund's shadow NAV to drop below $1.00 (or embed losses in the fund's market-based NAV per share). As a result, managers tend to avoid trading when markets are strained, contributing to further illiquidity in the short-term financing markets in such circumstances. A NAV buffer should enable funds to absorb small losses and thus could reduce this tendency. Thus, by adding resiliency to money market funds and enhancing their ability to absorb losses, a NAV buffer may benefit capital formation in the long term. A more stable money market fund industry may produce more stable short-term financing markets, which would provide more reliability as to the demand for short-term credit to the economy.

ii. Costs of a NAV Buffer

The Proposing Release also recognized that there are significant ongoing costs associated with a NAV buffer. Some commenters agreed that a capital buffer would impose a cost on funds and their investors, but these commenters claimed that the magnitude of the costs would be relatively modest.[2079] For the reasons discussed below, we disagree with these commenters that the costs would be relatively modest. Costs can be divided into direct costs that affect money market fund sponsors or investors and indirect costs that impact capital formation. In addition, a NAV buffer does not protect shareholders completely from the possibility of heightened rapid redemption activity during periods of market stress, particularly in periods where the buffer is at risk of depletion. As the buffer becomes impaired (or if shareholders believe the fund may suffer a loss that exceeds the size of its NAV buffer), shareholders have an incentive to redeem shares

[2079] *See* Americans for Fin. Reform Comment Letter; Hanson et al. Comment Letter; Squam Lake Comment Letter.

quickly because, once the buffer fails, the fund will no longer be able to maintain a stable value and shareholders will experience sudden losses.[2080] Such rapid severe redemptions could impair the fund's business model and viability.

Another possible implication is that money market funds with buffers may avoid holding riskier short-term debt securities (like commercial paper) and instead hold a higher amount of low yielding investments like cash, Treasury securities, or Treasury repos. This could lead money market funds to hold more conservative portfolios than investors may prefer, given tradeoffs between principal stability, liquidity, and yield.[2081]

The most significant indirect cost of a NAV buffer is the opportunity cost associated with maintaining a NAV buffer.[2082] Those contributing to the buffer essentially deploy valuable scarce resources to maintain a NAV buffer rather than being able to use the funds elsewhere. The cost of diverting funds for this purpose represents a significant incremental cost of doing business for those providing the buffer funding. We cannot provide estimates of these opportunity costs because the relevant data is not currently available to the Commission.[2083]

2080 *See, e.g.*, Systemic Risk Council FSOC Comment Letter (stating that capital is difficult to set and is imperfect, that "[g]iven the lack of data and impossibility of modeling future events, even [a 3% NAV buffer] runs the risk of being too high, or too low to protect the system in the future" and that "too little capital could provide a false sense of security in a crisis"). *See also infra* note 2091 and accompanying discussion.

2081 *But see, e.g.*, U.S. Chamber FSOC Comment Letter (arguing that "a NAV buffer is likely to incentivize sponsors to reach for yield."); Vanguard FSOC Comment Letter ("Capital buffers are also likely to carry unintended consequences, as some funds may purchase riskier, higher-yielding securities to compensate for the reduction in yield. As a result, capital buffers are likely to provide investors with a false sense of security."); Federated V Comment Letter ("If anything, creating a junior class of equity puts earnings pressure on an MMF to alter its balance sheet to decrease near-term liquid assets to generate investment returns available from longer-term, higher risk investments in order to either build capital through retained earnings or to compensate investors who have invested in the new class of subordinated equity capital of the MMF.").

2082 *See* Lewis, *supra* note 2072.

2083 The opportunity costs would represent the net present value of these forgone opportunities, an amount that

The second indirect cost of a NAV buffer is the equilibrium rate of return that a provider of funding for a NAV buffer would demand.[2084] An entity that provides such funding, possibly the fund sponsor, would expect to be paid a return that sets the market value of the buffer equal to the amount of the capital contribution. Since a NAV buffer is designed to absorb the same amount of risk regardless of its size, as noted by at least one commenter, the promised yield, or cost of the buffer, increases with the relative amount of risk it is expected to absorb.[2085] This is a well-known leverage effect.[2086]

One could analogize a NAV buffer to bank capital by considering the similarities between money market funds with a NAV buffer and banks with capital. A traditional bank generally finances long-term assets (customer loans) with short-term liabilities (demand deposits). The Federal Reserve Board, as part of its prudential regulation, requires banks to adhere to certain minimum capital requirements.[2087] Bank capital, among other functions, provides a buffer that allows banks to withstand a certain amount of sudden demands for liquidity and losses without becoming insolvent and thus needing to draw upon federal deposit

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cannot be estimated without relevant data about each firm's productive opportunities. However, a number of FSOC commenters have already cautioned that a NAV buffer could make money market funds unprofitable. *See, e.g.*, Angel FSOC Comment Letter (stating that "in today's low yield environment, even five basis points [of cost associated with a NAV buffer] would push most money market funds into negative yield territory."); BlackRock FSOC Comment Letter ("[A]ny capital over 0.75% will make the MMF product uneconomical for sponsors to offer."); Comment Letter of Federated Investors, Inc. (Feb. 15. 2013) (available in File No. FSOC–2012–0003) ("Federated Investors Feb. 15 FSOC Comment Letter") (calculating that "prime MMFs would no longer be economically viable products" based on cost estimates provided by the ICI.).

2084 *See* Lewis, *supra* note 2072.

2085 *See* Squam Lake Comment Letter.

2086 The leverage effect reflects the concept that higher leverage levels induce an equity holder to demand higher returns to compensate for the higher risk levels.

2087 *See* the Federal Reserve Board's website on Capital Guidelines and Adequacy, *available at* http://www.federalreserve.gov/bankinforeg/topics/capital.htm, for an overview of minimum capital requirements.

insurance or other aspects of the regulatory safety net for banks.[2088] The fact that the bank assets have a long maturity and are illiquid compared to the bank's liabilities results in a maturity and liquidity mismatch problem that creates the possibility of a depositor run during periods of stress.[2089] Capital is one part of a prudential regulatory framework employed to deter runs in banks and generally protect the safety and soundness of the banking system. A money market fund with a NAV buffer has been described as essentially a "special purpose bank" where fund shareholders' equity is equivalent to demand deposits and a NAV buffer is analogous to the bank's capital.[2090] Since a NAV buffer is effectively a leveraged position in the underlying assets of the fund that is designed to absorb interest rate risk and mitigate default risk, a provider of buffer funding should demand a return that reflects the fund's aggregate cost of capital plus compensation for the fraction of default risk it is capable of absorbing.

The effectiveness of a NAV buffer to protect against large-scale redemptions during periods of stress is predicated upon whether shareholders expect the decline in the value of the fund's portfolio to be less than the value of the NAV buffer. Once investors anticipate that the

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2088 *See, e.g.*, Allen N. Berger *et al.*, *The Role of Capital in Financial Institutions*, 19 J. OF BANKING AND FIN. 393 (1995) ("Berger") ("Regulators require capital for almost all the same reasons that other uninsured creditors of banks 'require' capital—to protect themselves against the costs of financial distress, agency problems, and the reduction in market discipline caused by the safety net.").

2089 More generally, banks are structured to satisfy depositors' preference for access to their money on demand with businesses' preference for a source of longer-term capital. However, the maturity and liquidity transformation provided by banks can also lead to runs. Deposit insurance, access to a lender of last resort, and other bank regulatory tools are designed to lessen the incentive of depositors to run. *See, e.g.*, Douglas W. Diamond & Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON 401 (June 1983) ("Diamond & Dybvig"); Mark J. Flannery, *Financial Crises, Payment System Problems, and Discount Window Lending*, 28 JOURNAL OF MONEY, CREDIT AND BANKING 804 (1996); Jeffrey A. Miron, *Financial Panics, the Seasonality of the Nominal Interest Rate, and the Founding of the Fed*, 76 AMERICAN ECONOMIC REVIEW 125 (1986); S. Bhattacharya & D. Gale, *Preference Shocks, Liquidity, and Central Bank Policy*, in NEW APPROACHES TO MONETARY ECONOMICS (eds., W. Barnnett and K. Singleton, 1987).

2090 *See, e.g.*, Gary Gorton & George Pennacchi, *Money Market Funds and Finance Companies: Are They the Banks of the Future?*, in STRUCTURAL CHANGE IN BANKING (Michael Klausner & Lawrence J. White, eds. 1993), at 173-214.

buffer will be depleted, they have an incentive to redeem before it is completely depleted.[2091] In this sense, a NAV buffer that is not sufficiently large is incapable of fully mitigating the possibility of a liquidity run. The drawback with increasing buffer size to address this risk, however, is that the opportunity costs of operating a buffer increase as the size of the buffer increases. Due to the correlated nature of portfolio holdings across money market funds, this could amplify market-wide run risk if NAV buffer impairment also is highly correlated across money market funds. The incentive to redeem could be further amplified if, as contemplated in the FSOC Proposed Recommendations, a NAV buffer failure would require a money market fund to either liquidate or convert to a floating NAV. If investors anticipate this occurring, some investors that value principal stability and liquidity may no longer view money market funds as viable investments.

As noted above, substantial NAV buffers may be able to absorb much, if not all, of the default risk in the underlying portfolio of a money market fund. This implies that any compensation for bearing default risk will be transferred from current money market fund shareholders to those financing the NAV buffer, effectively converting a prime money market fund into a fund that mimics the return of a Treasury fund for current money market fund shareholders. If fund managers are unable to pass through the yield associated with holding relatively riskier securities (compared to government securities), like commercial paper or short-

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2091 *See, e.g.,* Federal Reserve Bank Presidents FSOC Comment Letter ("The [FSOC] Proposal notes that a fund depleting its NAV buffer would be required to suspend redemptions and liquidate under rule 22e-3 or continue operating as a floating NAV fund. However, this sequence of events could be destabilizing. Investors in 3% NAV buffer funds may be quite risk averse, even more so than floating NAV MMF investors might be, given their revealed preference for stable NAV shares. If they foresee a possible conversion to floating NAV once the buffer is depleted, these risk-averse investors would have an incentive to redeem prior to conversion. If, on the other hand, investors foresee a suspension of redemptions, they would presumably have an even stronger incentive to redeem before facing a liquidity freeze when the NAV buffer is completely depleted.").

term municipal securities, to money market fund shareholders, it is likely that they will reduce their investment in these securities.[2092] While lower yields would reduce, but not necessarily eliminate, the utility of the product to investors, it could have a negative impact on capital formation. Since the probability of breaking the buck is higher for a money market fund that invests in these relatively riskier securities (*e.g.*, a fund with a WAM of 90 days rather than one with a WAM of 60 days)[2093] and fund managers cannot pass through the higher associated yields, it is likely that managers will reduce investments in these securities because they cannot differentiate their funds on the basis of yield.

In addition, many investors are attracted to money market funds because they provide a stable value but have higher rates of return than Treasury securities. These higher rates of return are intended to compensate for exposure to greater credit risk and potential volatility than Treasury securities. As a result of funding the buffer, the returns to money market fund shareholders are likely to decline, potentially reducing demand from investors who are attracted to money market funds for their higher yield than alternative stable value investments.[2094]

Taken together, the demand by investors for some yield and the incentives for fund managers to reduce portfolio risk may impact competition and capital formation in two ways. First, investors seeking higher yield may move their funds to other alternative investment

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2092 *But see supra* note 2081.

2093 *See* DERA Study, *supra* note 24, at 28-31.

2094 *See, e.g.,* Invesco FSOC Comment Letter ("As a result of the ongoing ultra-low interest rate environment, MMF yields remain at historic lows … A requirement to divert a portion of a MMF's earnings in order to build a NAV buffer would result in prime MMF yields essentially equaling those of Treasury MMFs (which would not be required to maintain a buffer under the Proposal). Faced with the choice of equivalent yields but asymmetrical risks, logical investors would abandon prime funds for Treasury funds, potentially triggering the very instability that reforms are intended to prevent and vastly reducing corporate borrowers' access to short-term financing.").

vehicles resulting in a contraction in the money market fund industry. In addition, fund managers may have an incentive to reduce the funds' investment in commercial paper or short-term municipal securities in order to reduce the volatility of cash flows and increase the resilience of the NAV buffer. In both of these cases, there may be an effect on the short-term financing markets if the decrease in demand for short-term securities from money market funds results in an increase in the cost of capital for issuers of commercial paper and other securities.

We have carefully considered the comments received on both the PWG report and our Proposing Release regarding the NAV buffer alternative and we continue to believe that our original analysis of the costs and benefits remains appropriate. Specifically, we continue to believe that a NAV buffer should not be adopted because we feel that a NAV buffer would reduce yields on money market funds and would therefore render such funds to be unattractive to many investors to a greater extent than the reforms we are adopting.

b. Minimum Balance at Risk

As discussed above, under the second alternative in the FSOC Proposed Recommendations, a 1% capital buffer is paired with an MBR or a holdback of a certain portion of a shareholder's money market fund shares.[2095] In the event of fund losses, this alternative effectively would create a "waterfall" with the NAV buffer bearing first losses, subordinated holdback shares bearing second losses, followed by non-subordinated holdback shares, and finally by the remaining shares in the fund (and then only if the loss exceeded the aggregate value of the holdback shares). This allocation of losses, in effect, would impose a "liquidity fee" on redeeming shareholders if the fund experiences a loss that exceeds the NAV buffer. The

2095 *See* FSOC Proposed Recommendations, *supra* note 1562, at section V.B.

value of the holdback shares effectively provides the non-redeeming shareholders with an additional buffer cushion when the NAV buffer is exhausted. The Commission did not receive any comments on this alternative, and, as discussed below, we continue to believe that a minimum balance at risk is not the most appropriate alternative to meet the policy goals of our reforms.

i. Benefits of a Minimum Balance at Risk

As discussed in the Proposing Release, an MBR requirement could provide some benefits to money market funds. First, it would force redeeming shareholders to pay for the cost of liquidity during periods of severe market stress when liquidity is particularly costly. Such a requirement could create an incentive against shareholders participating in a run on a fund facing potential losses of certain sizes because shareholders will incur greater losses if they redeem.[2096] It thus may reduce the amount of less liquid securities that funds would need to sell in the secondary markets at unfavorable prices to satisfy redemptions and therefore may increase stability in the short-term financing markets.

Second, it would allocate liquidity costs to investors demanding liquidity when the fund itself is under severe stress. This would be accomplished primarily by making redeeming shareholders bear first losses when the fund first depletes its buffer and then the fund's value falls below its stable share price within 30 days after their redemption. Redeeming shareholders subject to the holdback are the ones whose redemptions may have contributed to fund losses if securities are sold at fire sale prices to satisfy those redemptions. If the fund sells assets to meet

2096 *See, e.g.*, Comment Letter of Jeffrey Gordon (Feb. 28, 2013) (available in File No. FSOC–2012–0003) ("Gordon FSOC Comment Letter") ("[T]he Minimum Balance at Risk feature is a novel way to reduce MMF run risk by imposing some of the run costs on the users of MMFs.").

redemptions, the costs of doing so would be incurred while the redeeming investor is still in the fund because of the delay in redeeming his or her holdback shares. Essentially, investors would face a choice between redeeming to preserve liquidity and remaining invested in the fund to protect their principal.

Third, an MBR would provide the fund with 30 days to obtain cash to satisfy the holdback portion of a shareholder's redemption. This may give the fund time for distressed securities to recover when, for example, the market has acquired additional information about the ability of the issuer to make payment upon maturity. As of February 28, 2014, 43% of prime money market fund assets had a maturity of 30 days or less.[2097] Thus, an MBR would provide time for potential losses in fund portfolios to be avoided since distressed securities could trade at a heavy discount in the market but may ultimately pay in full at maturity. This added resiliency could not only benefit the fund and its investors, but it also could reduce the contagion risk that a run on a single fund can cause when assets are correlated across the money market fund industry.

ii. Costs of a Minimum Balance at Risk

However, we also recognized that there are a number of drawbacks to an MBR requirement. It forces shareholders that redeem more than 97% of their assets to pay for any losses, if incurred, on the entire portfolio on a ratable basis. Rather than simply delaying redemption requests, the contingent nature of the way losses are distributed among shareholders forces early redeeming investors to bear the losses they are trying to avoid.

As discussed in section III.A.1 above, there may be a tendency for a money market fund to meet redemptions by selling assets that are the most liquid and have the smallest capital

2097 Based on Form N-MFP data, with maturity determined in the same manner as it is for purposes of computing the fund's weighted average life.

losses. Liquid assets may be sold first because managers can trade at close to their non-distressed valuations because they do not typically experience large liquidity discounts. Managers also tend to sell assets whose market-based values are close to or exceed amortized cost because realized capital gains and losses will be reflected in a fund's shadow price. Assets that are highly liquid will not be sold at significant discounts to fair value. Since the liquidity discount associated with the sale of liquid assets is smaller than that for illiquid assets, shareholders can continue to immediately redeem shares at $1.00 per share under an MBR provided the fund is capable of selling liquid assets. Once a fund exhausts its supply of liquid assets, it will sell less liquid assets to meet redemption requests, possibly at a loss. If in fact assets are sold at a loss, the stable value of the fund's shares could be impaired, motivating shareholders to be the first to leave. Therefore, even with a NAV buffer and an MBR there continues to be an incentive to redeem in times of fund and market stress.[2098]

The MBR, which applies to all redemptions without regard to the fund's circumstances at the time of redemption, constantly restricts some portion of an investor's holdings. Under the resulting continuous impairment of full liquidity, many current investors who value liquidity in money market funds may shift their investment to other short-term investments that offer higher yields or fewer restrictions on redemptions. A reduction in the number of money market funds and/or the amount of money market fund assets under management as a result of any further money market fund reforms would have a greater negative impact on money market fund

2098 *See, e.g.*, Comment Letter of Federated Investors, Inc. (Dec. 17, 2012) (available in File No. FSOC-2012-0003) ("The data, analyses, surveys and other commentary in the SEC's docket show convincingly that the MBR/capital proposal's impact in reducing runs is speculative and unproven and in fact could and likely would precipitate runs under certain circumstances."); Comment Letter of Charles Schwab (Jan. 17, 2013) (available in File No. FSOC–2012–0003) ("[I]t is not clear to us that holding back a certain percentage of a client's funds would reduce run risk.")

sponsors whose fund groups consist primarily of money market funds, as opposed to sponsors that offer a more diversified range of mutual funds or engage in other financial activities (*e.g.*, brokerage). Given that money market funds' largest commercial paper exposure is to issuances by financial institutions,[2099] a reduction in the demand of money market instruments may have an impact on the ability of financial institutions to issue commercial paper.[2100]

The MBR would introduce additional complexity to what to-date has been a relatively simple product for investors to understand. For example, requiring shareholders that redeem more than 97% of their balances to bear the first loss creates a cash flow waterfall that is complex and that may be difficult for unsophisticated investors to understand fully.[2101]

Implementing an MBR could involve significant operational costs. These would include costs to convert existing shares or issue new holdback and subordinated holdback shares and changes to systems that would allow record-keepers to account for and track the MBR and allocation of unrestricted, holdback or subordinated holdback shares in shareholder accounts. We expect that these costs would vary significantly among funds depending on a variety of factors. In addition, funds subject to an MBR may have to amend or adopt new governing documents to issue different classes of shares with different rights: unrestricted shares, holdback

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2099 *See supra* section III.K.3.

2100 *See, e.g.*, Wells Fargo FSOC Comment Letter ("the MBR requirement would have the anticipated impact of driving investors and sponsors out of money market funds. We expect that the resulting contraction of assets in the money market fund industry would, in turn, have disruptive effects on the short-term money markets, decrease the supply of capital and/or raise the cost of borrowing for businesses, states, municipalities and other local governments that rely on money market funds, and jeopardize the fragile state of the economy and its long-term growth prospects.").

2101 Several commenters have noted that the MBR would be confusing to retail investors. *See, e.g.*, Comment Letter of Fidelity Investments (Feb. 14, 2013) (available in File No. FSOC–2012–0003); Comment Letter of T. Rowe Price (Jan. 30, 2013) (available in File No. FSOC–2012–0003).

shares, and subordinated holdback shares.[2102] The costs to amend governing documents would vary based on the jurisdiction in which the fund is organized and the amendment processes enumerated in the fund's governing documents, including whether board or shareholder approval is necessary.[2103] The costs of obtaining shareholder approval, amending governing documents, or changing domicile would depend on a number of factors, including the size and the number of shareholders of the fund.[2104]

As noted above, we did not receive any comments on the MBR alternative based on our discussion of it in the Proposing Release and we continue to believe that overall, the complexity of an MBR may be more costly for unsophisticated investors because they may not fully appreciate the implications. In addition, money market funds and their intermediaries (and money market fund shareholders that have in place cash management systems) could incur potentially significant operational costs to modify their systems to reflect a MBR requirement. We believe that an MBR coupled with a NAV buffer would turn money market funds into a more complex instrument whose valuation may become more difficult for investors to

2102 One commenter on the PWG Report suggested that the MBR framework may be achieved by issuing different classes of shares with conversion features triggered by shareholder activity. *See* Comment Letter of Federated Investors, Inc. (Mar. 16, 2012) (available in File No. 4-619). Multiple class structures are common among funds offering different arrangements for the payment of distribution costs and related shareholder services. Funds have also developed the operational capacity to track and convert certain share classes to others based on the redemption activity of the shareholder. *See* Mutual Fund Distribution Fees; Confirmations, Investment Company Act Release No. 29367 (July 21, 2010) [75 FR 47064 (Aug. 4, 2010)], at section III.D.1.b.

2103 *See* Comment Letter of Federated Investors, Inc. (Re: Alternative 2) (Jan. 25. 2013) (available in File No. FSOC–2012–0003); March 2012 PWG Comment Letter.

2104 Other factors may include the concentration of fund shares among certain shareholders, the number of objecting beneficial owners and non-objecting beneficial owners of street name shareholders, whether certain costs can be shared among funds in the same family, whether the fund employs a proxy solicitor and the services the proxy solicitor may provide, and whether the fund, in connection with sending a proxy statement to shareholders, uses the opportunity to have shareholders vote on other matters. Other matters that may be set forth in the proxy materials include the election of directors, a change in investment objectives or fundamental investment restrictions, and fund reorganization or re-domicile.

understand.

3. *Alternatives in the PWG Report*

As discussed in the Proposing Release, we considered each option discussed in the President's Working Group on Financial Markets, which published a report on money market fund reform options in 2010 (the "PWG Report").[2105] We discussed these alternatives in the Proposing Release, and the comments that we had received on several of these alternatives, as discussed below. We have decided not to pursue these options because we believe, after considering the comments we received on the PWG Report, as well as the comments we received on the Proposing Release and the economic analysis set forth in this Release, that they would not achieve our regulatory goals as well as the package of reforms that we are adopting today. We discuss below these options, and our principal reasons for not adopting them.[2106]

a. Private Emergency Liquidity Facility

As discussed in the Proposing Release, one option outlined by the PWG Report, is a private emergency liquidity facility ("LF") for money market funds.[2107] One comment letter on the PWG Report proposed a structure for such a facility in some detail.[2108] Under this proposal, the LF would be organized as a state-chartered bank or trust company. Sponsors of prime money market funds would be required to provide initial capital to the LF in an amount based on their

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[2105] Report of the President's Working Group on Financial Markets, *Money Market Fund Reform Options* (Oct. 2010) ("PWG Report") *available at* http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf. The members of the PWG included the Secretary of the Treasury Department (as chairman of the PWG), the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the SEC, and the Chairman of the Commodity Futures Trading Commission.

[2106] We note we may not have the legal authority to implement some of the alternatives discussed below, even were we to find that they might help achieve our regulatory goals.

[2107] *See* PWG Report, *supra* note 506, at 23-25.

[2108] *See* ICI Jan 2011 PWG Comment Letter.

assets under management up to 4.9% of the LF's total initial equity, but with a minimum investment amount. The LF also would charge participating funds commitment fees of 3 basis points per year on fund assets under management. Finally, at the end of its third year, the LF would issue to third parties time deposits paying a rate approximately equal to the 3-month bank CD rate. The LF would be designed to provide initially $7 billion in backup redemption liquidity to prime money market funds, $12.3 billion at the end of the first year, $30 billion at the end of five years, and $50-55 billion at the end of year 10 (these figures take into account the LF's ability to expand its capacity by borrowing through the Federal Reserve's discount window). The LF would be leveraged at inception, but would seek to achieve and maintain a minimum leverage ratio of 5%. Each fund would be able to obtain a maximum amount of cash from the LF. The LF would not provide credit support. It would not provide liquidity to a fund that had "broken the buck" or would "break the buck" after using the LF. There also would be eligibility requirements for money market fund access to the LF.

Participating funds would elect a board of directors that would oversee the LF, with representation from large, medium, and smaller money market fund complexes. The LF would have restrictions on the securities that it could purchase from funds seeking liquidity and on the LF's investment portfolio. The LF would be able to pledge approved securities (less a haircut) to the Federal Reserve discount window. We note that the interaction with the Federal Reserve discount window (as well as the bank structure of the LF) means that the Commission does not have regulatory authority to create the LF.

An LF could lessen and internalize some of the liquidity risk of money market funds that contributes to their vulnerability to liquidity runs by acting as a purchaser of last resort if a liquidity event is triggered. It also could create efficiency gains by pooling this liquidity risk within the money market fund industry.[2109] Commenters on the PWG Report addressing this option generally supported the concept of the LF, stating that it would facilitate money market funds internalizing the costs of liquidity and other risks associated with their operations through the cost of participation. In addition, such a facility could reduce contagion effects by limiting the need for fire sales of money market fund assets to satisfy redemption pressures.[2110]

However, several commenters expressed reservations regarding this reform option. For example, one commenter supported "the idea" of such a facility "in that it could provide an incremental liquidity cushion for the industry," but noted that "it is difficult to ensure that [a liquidity facility] with finite purchasing capacity is fairly administered in a crisis…, [which] could lead to [money market funds] attempting to optimize the outcome for themselves, rather than working cooperatively to solve a systemic crisis."[2111] This commenter also stated that shared capital "poses the danger of increased risk-taking by industry participants who believe that they have access to a large collective pool of capital."[2112] Another commenter, although "receptive to a private liquidity facility," expressed concern that the facility itself might be vulnerable to runs if the facility raises funding through the short-term financing markets.[2113] This

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2109 The liquidity facility would function in a fashion similar to private deposit insurance for banks. For the economics of using a liquidity facility to stop runs, *see* Diamond & Dybvig, *supra* note 2089.

2110 *See, e.g.*, ICI Jan 2011 PWG Comment Letter; Letter of the Dreyfus Corporation (Jan. 10, 2011) (available in File No. 4–619) ("Dreyfus PWG Comment Letter"); Comment Letter of Federated Investors, Inc. (Jan. 7, 2011) (available in File No. 4–619).

2111 Comment Letter of BlackRock Inc. (Jan. 10, 2011) (available in File No. 4–619) ("BlackRock PWG Comment Letter").

2112 *Id.* In the case of deposit insurance, bank capital is used to overcome the moral hazard problem of excessive risk taking. *See, e.g.*, Berger, *supra* note 2088; Michael C. Keeley & Frederick T. Furlong, *A Reexamination of Mean-Variance Analysis of Bank Capital Regulation*, 14 J. OF BANKING AND FIN. 69 (1990).

2113 Comment Letter of Wells Fargo Funds Management, LLC (Jan. 10, 2011) (available in File No. 4–619) ("Wells Fargo PWG Comment Letter").

commenter also noted other challenges in designing such a facility, including governance issues and "the fact that because of its size, the liquidity facility would only be able to address the liquidity needs of a very limited number of funds and would not be able to meet the needs of the entire industry in the event of a run."[2114] Another commenter expressed concerns that "the costs, infrastructure and complications associated with private liquidity facilities are not worth the minimal liquidity that would be provided."[2115] Finally, another commenter echoed this concern, stating:

> [a private liquidity facility] cannot possibly eliminate completely the risk of breaking the buck without in effect eliminating maturity transformation, for instance through the imposition of capital and liquidity standards on the private facilities. Thus, in the case of a pervasive financial shock to asset values, [money market fund] shareholders will almost certainly view the presence of private facilities as a weak reed and widespread runs are likely to develop. In turn, government aid is likely to flow. Because shareholders will expect government aid in a pervasive financial crisis, shareholder and [money market fund] investment decisions will be distorted. Therefore, we view emergency facilities as perhaps a valuable enhancement, but not a reliable overall solution either to the problem of runs or to the broader problem of distorted investment decisions.[2116]

A private liquidity facility was also discussed at the 2011 Roundtable, where many

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2114 *Id.*

2115 Comment Letter of Fidelity Investments (Jan. 10, 2011) (available in File No. 4–619) ("Fidelity Jan 2011 PWG Comment Letter").

2116 Comment Letter of Federal Reserve Bank of Richmond (Jan. 10, 2011) (available in File No. 4–619) ("Richmond Fed PWG Comment Letter").

participants made points and expressed concerns similar to those discussed above.[2117]

The Commission did not receive any comments regarding this alternative after we proposed our reforms. However, as noted in the Proposing Release, we have considered comments on the PWG Report, and our staff has spent considerable time evaluating whether an LF would successfully mitigate the risk of liquidity runs in money market funds and change the economic incentives of market participants. We continue to believe that this alternative should not be adopted for the reasons discussed in the Proposing Release, including, foremost because we are concerned that a private liquidity facility would not have sufficient purchasing capacity in the event of a widespread run without access to the Federal Reserve's discount window and we do not have legal authority to grant discount window access to an LF. Access to the discount window would raise complicated policy considerations and likely would require legislation.[2118] In addition, such a facility would not protect money market funds from capital losses triggered by credit events as the facility would purchase securities at the prevailing market price. Thus, we

2117 *See, e.g.*, Roundtable Transcript, *supra* note 63. (Brian Reid, Investment Company Institute) (discussing the basic concept for a private liquidity facility as proposed by the Investment Company Institute and its potential advantages providing additional liquidity to money market funds when market makers were unwilling or unable to do so); (Paul Tucker, Bank of England) (discussing the potential policy issues involved in the Federal Reserve extending discount window access to such a facility); (Daniel K. Tarullo, Federal Reserve Board) (discussing the potential policy issues involved in the Federal Reserve extending discount window access to such a facility); (Jeffrey A. Goldstein, Department of Treasury) (questioning whether there were potential capacity issues with such a facility); (Sheila C. Bair, Federal Deposit Insurance Corporation) (stating her belief that "the better approach would be to try to reduce or eliminate the systemic risk, as opposed to just kind of acknowledge it" and institutionalize a "bailout facility" in a way that would exacerbate moral hazard).

2118 *See, e.g.*, *id.* (Paul Tucker, Bank of England) ("As I understand it, this is a bank whose sole purpose is to stand between the Federal Reserve and the money market mutual fund industry. If I think about that as a central banker, I think 'So, I'm lending to the money market mutual fund industry.' What do I think about the regulation of the money market mutual fund industry? ...And the other thought I think I would have is...'If the money market mutual fund industry can do this, what's to stop other parts of our economy doing this and tapping into the special ability of the central bank to create liquidity'...It's almost to bring out the enormity of the idea that you have floated...it's posing very big questions indeed, about who should have direct access and to the nature of the monetary economy.")

are concerned that such a facility without additional loss protection would not sufficiently prevent widespread liquidity-induced runs on money market funds.

We also continue to be concerned about the conflicts of interest inherent in any such facility given that it would be managed by a diverse money market fund industry, not all of whom may have the same interests at all times. Participating money market funds would be of different sizes and the governance arrangements would represent some fund complexes and not others. There may be conflicts relating to money market funds whose nature or portfolio makes them more or less likely to ever need to access the LF. The LF may face conflicts allocating limited liquidity resources during a crisis, and choosing which funds gain access and which do not. To be successful, an LF would need to be managed such that it sustains its credibility, particularly in a crisis, and does not distort incentives in the market to favor certain business models or types of funds.

These potential issues collectively created a concern that such a facility may not prove effective in a crisis and thus we would not be able to achieve our regulatory goals of reducing money market funds' susceptibility to liquidity runs and the corresponding impacts on investor protection and capital formation. Combined with our lack of authority to create an LF bank with access to the Federal Reserve's discount window, these concerns ultimately have led us to not pursue this alternative.

b. Insurance

As discussed in the Proposing Release, we also considered whether money market funds should be required to carry some form of public or private insurance, similar to bank accounts that carry Federal Deposit Insurance Corporation deposit insurance, which has played a central role in mitigating the risk of runs on banks.[2119] The Treasury's Temporary Guarantee Program helped slow the run on money market funds in September 2008, and thus we naturally considered whether some form of insurance for money market fund shareholders might mitigate the risk of liquidity runs in money market funds and their detrimental impacts on investors and capital formation.[2120] Insurance might replace money market funds' historical reliance on discretionary sponsor support, which has covered capital losses in money market funds in the past but, as discussed above, also contributes to these funds' vulnerability to liquidity runs.

As noted in the Proposing Release, although a few commenters on the PWG Report expressed some support for a system of insurance for money market funds,[2121] most opposed this potential reform option.[2122] Those commenters expressed concern that government insurance would create moral hazard and encourage excessive risk taking by funds.[2123] They also asserted that such insurance could distort capital flows from bank deposits or government money market

2119 *See generally* Charles W. Calomiris, *Is Deposit Insurance Necessary? A Historical Perspective*, 50 J. ECON. HIST. 283 (1990); RITA CARISANO, DEPOSIT INSURANCE: THEORY, POLICY AND EVIDENCE (1992); Diamond & Dybvig, *supra* note 2089.

2120 Authority for a guarantee program like the Temporary Guarantee Program for Money Market Funds has since been removed. *See* Emergency Economic Stabilization Act of 2008 § 131(b), 12 U.S.C. 5236 (2008) (prohibiting the Secretary of Treasury from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the U.S. money market fund industry).

2121 *See, e.g.*, Richmond Fed PWG Comment Letter (stating that insurance would be a second best solution for mitigating the risk of runs in money market funds after a floating net asset value because insurance premiums and regulation are difficult to calibrate correctly, so distortions would likely remain); Comment Letter of Paul A. Volcker (Feb. 11, 2011) (available in File No. 4-619) ("Volcker PWG Comment Letter") (stating that money market funds wishing to retain a stable net asset value should reorganize as special purpose banks or "submit themselves to capital and supervisory requirements and FDIC-type insurance on the funds under deposit").

2122 *See, e.g.*, Comment Letter of the American Bankers Association (Jan. 10, 2011) (available in File No. 4-619) ("American Bankers PWG Comment Letter"); BlackRock PWG Comment Letter; Dreyfus PWG Comment Letter; Fidelity Jan 2011 PWG Comment Letter; Wells Fargo PWG Comment Letter; Comment Letter of John M. Winters (Jan. 5, 2011) (available in File No. 4-619) ("Winters PWG Comment Letter").

2123 *See, e.g.*, American Bankers PWG Comment Letter; BlackRock PWG Comment Letter; ICI Jan 2011 PWG Comment Letter; Wells Fargo PWG Comment Letter.

funds into prime money market funds, and that this disintermediation could and likely would cause significant disruption to the banking system and the money market.[2124] For example, one commenter stated that:

> "If the insurance program were partial (for example, capped at $250,000 per account), many institutional investors likely would invest in this partially insured product rather than directly in the market or in other cash pools because the insured funds would offer liquidity, portfolios that were somewhat less risky than other pools, and yields only slightly lower than alternative cash pools. Without insurance covering the full value of investors' account balances, however, there would still be an incentive for these investors to withdraw the uninsured portion of their assets from these funds during periods of severe market stress."[2125]

Commenters stated that with respect to private insurance, it has been made available in the past but the product proved unsuccessful due to its cost and in the future would be too costly.[2126] They also stated that they did not believe any private insurance coverage would have sufficient capacity.[2127] However, some commenters on our Proposing Release supported a system of insurance for money market funds, noting that historically insurance has provided stability during times of stress.[2128]

2124 *See, e.g.*, ICI Jan 2011 PWG Comment Letter; Wells Fargo PWG Comment Letter.

2125 *See* ICI Jan 2011 PWG Comment Letter.

2126 *See, e.g.*, BlackRock PWG Comment Letter; Fidelity Jan 2011 PWG Comment Letter; Dreyfus PWG Comment Letter; Wells Fargo PWG Comment Letter; Winters PWG Comment Letter.

2127 *See, e.g.*, BlackRock PWG Comment Letter; Fidelity Jan 2011 PWG Comment Letter; Wells Fargo PWG Comment Letter; Winters PWG Comment Letter.

2128 *See* Comment Letter of John Chang (June 27, 2013) ("Chang Comment Letter"); Comm. on Cap. Mkt. Reg. Comment Letter.

We have carefully considered the comments on the PWG Report and our Proposing Release. However, considering foremost that we do not have regulatory authority to create a public insurance scheme for money market funds, we are not pursuing this option. Separately, we continue to believe that it would not achieve our goal, among others, of materially reducing the contagion effects from heavy redemptions at money market funds without undue costs. We have made this determination based on money market fund insurance's potential for creating moral hazard and encouraging excessive risk-taking by money market funds, given the difficulties and costs involved in creating effective risk-based pricing for insurance and additional regulatory structure to offset this incentive.[2129] If insurance actually increases moral hazard and decreases corresponding market discipline, it may in fact increase rather than decrease money market funds' susceptibility to liquidity runs. If the only way to counter these incentives was by imposing a very costly regulatory structure and risk-based pricing system our reforms potentially offer a better ratio of benefits to associated costs. Finally, we were concerned with the difficulty of creating private insurance at an appropriate cost and of sufficient capacity for a several trillion-dollar industry that tends to have highly correlated tail risk. All of these considerations have led us to not pursue this option further.

c. Special Purpose Bank

In the Proposing Release, we also evaluated whether money market funds should be regulated as special purpose banks. Stable net asset value money market fund shares can bear some similarity to bank deposits.[2130] Some aspects of bank regulation could be used to mitigate

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2129 *See, e.g.*, Yuk-Shee Chan et al., *Is Fairly Priced Deposit Insurance Possible?*, 47 J. FIN. 227 (1992).

2130 *See supra* note 2090 and accompanying text.

some of the risks described in section II above.[2131] Money market funds could benefit from access to the special purpose bank's capital, government deposit insurance and emergency liquidity facilities from the Federal Reserve on terms codified and well understood in advance, and thus with a clearer allocation of risks among market participants. We did not receive any comments on this alternative.

As the PWG Report noted, and as commenters reinforced, there are a number of drawbacks to regulating money market funds as special purpose banks. Although a few commenters expressed some support for this option,[2132] almost all commenters on the PWG Report addressing this possible reform option opposed it.[2133] Some commenters stated that the costs of converting money market funds to special purpose banks would likely be large relative to the costs of simply allowing more of this type of cash management activity to be absorbed into the existing banking sector.[2134] Others expressed concern that regulating money market funds as special purpose banks would radically change the product, make it less attractive to investors and thereby have unintended consequences potentially worse than the mitigated risk, such as leading sophisticated investors to move their funds to unregulated or offshore money market fund

2131 *Id.*

2132 *See* Volcker PWG Comment Letter ("MMMFs that desire to offer their clients bank-like transaction services…and promises of maintaining a constant or stable net asset value (NAV), should either be required to organize themselves as special purpose banks or submit themselves to capital and supervisory requirements and FDIC-type insurance on funds under deposit."); Winters PWG Comment Letter (supporting it as the third best option, stating that "[a]s long as the federal government continues to be the only viable source of large scale back-up liquidity for MMFs, it is intellectually dishonest to pretend that MMFs are not the functional equivalent of deposit-taking banks. Thus, inclusion in the federal banking system is warranted.").

2133 *See, e.g.*, BlackRock PWG Comment Letter; Fidelity Jan 2011 PWG Comment Letter; ICI Jan 2011 PWG Comment Letter; Comment Letter of the Institutional Money Market Funds Association (Jan. 10, 2011) (available in File No. 4-619) ("IMMF Comment Letter").

2134 *See, e.g.*, Richmond Fed PWG Comment Letter; ICI Jan 2011 PWG Comment Letter.

substitutes and thereby limiting the applicability of the current money market fund regulatory regime and creating additional systemic risk.[2135] For example, one of these commenters stated that transforming money market funds into special purpose banks would create homogeneity in the financial regulatory scheme by relying on the bank business model for all short-term cash investments and that "[g]iven the unprecedented difficulties the banking industry has experienced recently, it seems bizarre to propose that [money market funds] operate more like banks, which have absorbed hundreds of billions of dollars in government loans and handouts."[2136] Some pointed to the differences between banks and money market funds as justifying different regulatory treatment, and expressed concern that concentrating investors' cash management activity in the banking sector could increase systemic risk.[2137]

Foremost, we are not pursuing this option because we lack regulatory authority to transform money market funds into special purpose banks. Separately, however, we continue to believe that the potential costs involved in creating a new special purpose bank regulatory framework to govern money market funds are not justified. In addition, given our view that money market funds have some features similar to banks but other aspects quite different from banks, applying substantial parts of the bank regulatory regime to money market funds would not be well tailored to the structure of and risks involved in money market funds compared to the reforms we are adopting in this Release. As noted above, we received no comments on this alternative after the Proposing Release was issued. After considering our lack of regulatory

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2135 *See, e.g.*, Comment Letter of the Mutual Fund Directors Forum (Jan. 10, 2011) (available in File No. 4-619) ("MFDF PWG Comment Letter"); Fidelity Jan 2011 PWG Comment Letter; ICI Jan 2011 PWG Comment Letter.

2136 *See* Fidelity Jan 2011 PWG Comment Letter.

2137 *See, e.g.*, Fidelity Jan 2011 PWG Comment Letter; ICI Jan 2011 PWG Comment Letter.

authority to transform money market funds into special purpose banks as well as the views expressed in the PWG comment letters and for the reasons set forth above, we continue to believe that transforming money market funds into special purpose banks is not the most appropriate reform.

d. Dual Systems of Money Market Funds

In the Proposing Release, we evaluated options that would institute a dual system of money market funds, where either institutional money market funds or money market funds using a stable share price would be subject to more stringent regulation than others. As discussed in the PWG Report,[2138] money market fund reforms could focus on providing enhanced regulation solely for money market funds that seek to maintain a stable net asset value, rather than a floating NAV. Enhanced regulations could include any of the regulatory reform options discussed above such as mandatory insurance, a private liquidity facility, or special purpose bank regulation. Money market funds that did not comply with these enhanced constraints would have a floating NAV (though they would still be subject to the other risk-limiting conditions contained in rule 2a-7).

There also may be other enhanced forms of regulation or other types of dual systems. For example, an alternative formulation of this regulatory regime would apply the enhanced regulatory constraints discussed above (*e.g.*, a private liquidity facility or insurance) only to "institutional" money market funds, and "retail" money market funds would continue to be subject to rule 2a-7 as it exists today. We note that our decision to not subject retail and government money market funds to a floating NAV requirement and to not subject government

[2138] *See* PWG Report, *supra* note 506, at 29-32.

money market funds to a fees and gates requirement in effect creates a dual system, which we discuss in greater detail in section III.C.1.

These dual system regulatory regimes for money market funds could provide several important benefits. They attempt to apply the enhanced regulatory constraints on those aspects of money market funds that most contribute to their susceptibility to liquidity runs—whether it is institutional investors that have shown a tendency to run or a stable net asset value created through the use of amortized cost valuation that can create a first mover advantage for those investors that redeem at the first signs of potential stress. A dual system that imposes enhanced constraints on stable net asset value money market funds would allow investors to choose their preferred mixture of stability, risk, and return.

Because insurance, special purpose banks, and the private liquidity facility generally are beyond our regulatory authority to create, these particular dual options, which would impose one of these regulatory constraints on a subset of money market funds, could not be created under our current regulatory authority. Other options, such as requiring a floating NAV or liquidity fees and gates only for some types of money market funds, however, could be imposed under our current authority and are being adopted today.

Each of these dual systems generally has the same advantages and disadvantages as the potential enhanced regulatory constraints that would be applied, described above. In addition, for any two-tier system of money market fund regulation to be effective in reducing the risk of contagion effects from heavy redemptions, investors would need to fully understand the difference between the two types of funds and their associated risks. If they did not, they may indiscriminately flee both types of money market funds even if only one type experiences difficulty.[2139]

However, given the difficulties, drawbacks, and limitations on our regulatory authority associated with dual systems involving a special purpose bank, private liquidity facility and insurance, we continue to believe that a dual system of money market fund regulation involving these enhanced regulatory constraints should not be adopted. We did not receive any comments on these types of dual systems. However, as noted above, our current reforms would to some extent create a dual system of money market funds, and we discuss in greater detail our rationale for that approach, together with an analysis of commenter's views and the economic effects of that approach, in section III.C.1.

M. Clarifying Amendments

Since our adoption of amendments to rule 2a-7 in 2010, a number of questions have arisen regarding the application of certain of those changes. As stated in the Proposing Release, we are taking this opportunity to amend rule 2a-7 to clarify the operation of these provisions. In addition, we are also amending rule 2a-7 to state more clearly a limit we imposed on money market funds' investments in second tier securities in 2010.[2140] Two commenters stated that they supported our clarifying amendments but did not comment on any specific provisions of the

[2139] For example, when the Reserve Primary Fund broke the buck in September 2008, all money market funds managed by Reserve Management Company, Inc. experienced runs, even the Reserve U.S. Government Fund, despite the fact that the Reserve U.S. Government Fund had a quite different risk profile. *See* Press Release, A Statement Regarding The Reserve Primary and U.S. Government Funds (Sept. 19, 2008) *available at* http://www.primary-yieldplus-inliquidation.com/pdf/PressReleasePrimGovt2008_0919.pdf ("The U.S. Government Fund, which had approximately $10 billion in assets under management at the opening of business on September 15, 2008, has received redemption requests this week of approximately $6 billion.").

[2140] In addition, we are adopting as proposed, technical, conforming amendments to rule 419(b)(2)(iv) under the Securities Act of 1933 (17 CFR 230.419(b)(2)(iv)), which references certain paragraphs in rule 2a-7 the location of which is changing under our amendments. Specifically, we are replacing references to "paragraphs (c)(2), (c)(3), and (c)(4)" with "paragraph (d)".

amendments.[2141] One of these commenters generally supported our amendments but did not address or discuss any costs or benefits.[2142] The second commenter stated that it believed the clarifying amendments conform with current fund practices, that there would be no costs to funds that may not currently conform to these amendments, and that there would be little to no effect on market efficiency, competition or capital formation.[2143] A third commenter stated that most, if not all, money market funds currently conform to the proposed clarifying amendments, and stated that it does not anticipate a significant cost burden to the industry in conforming with any of the proposed amendments.[2144] This commenter specifically supported certain of the amendments and provided comment on certain specific provisions of the amendments.[2145] We discuss these comments below. No commenters objected to the proposed clarifying amendments.

As stated in the Proposing Release, we believe that for funds that are already acting consistently with our amendments, there will be no associated costs. We requested comment as to whether there would be any costs to funds that may not currently conform to the clarifying amendments. As noted above, no commenter provided any quantification of potential costs or benefits but one commenter suggested that there would be no costs to funds that may not currently conform to the clarifying amendments[2146] and one commenter stated that it does not anticipate a significant cost burden to the industry in conforming with the proposed

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2141 *See* U.S. Bancorp Comment Letter; Fidelity Comment Letter.

2142 *See* Fidelity Comment Letter.

2143 *See* U.S. Bancorp Comment Letter.

2144 *See* State Street Comment Letter.

2145 *Id.*

2146 *See* U.S. Bancorp Comment Letter.

amendments.[2147] As stated in the Proposing Release, we understand that most funds currently comply with our clarifying amendments and did not receive comments stating otherwise, except that one commenter noted that funds do not always include open sales receivables as liquid assets, and do not necessarily determine maturity for short-term floating rate securities in the manner proposed by the amendment.[2148] This commenter did note however, that it agreed that most, if not all money market funds currently conform to the proposed clarifying amendments.[2149] We therefore expect that the clarifying amendments will likely not result in any significant economic effects or quantifiable costs or benefits.

1. Definitions of Daily Liquid Assets and Weekly Liquid Assets

We are adopting, as proposed, amendments to clarify certain characteristics of instruments that qualify as a "daily liquid asset" or "weekly liquid asset" for purposes of the rule. First, we are making clear that money market funds cannot use the maturity-shortening provisions in current paragraph (d) of rule 2a-7 regarding interest rate readjustments[2150] when determining whether a security satisfies the maturity requirements of a daily liquid asset or weekly liquid asset,[2151] which include securities that will mature within one or five business days,

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2147 *See* State Street Comment Letter.

2148 *Id.*

2149 *Id.*

2150 *See* current rule 2a-7(d) (providing a number of exceptions to the general requirement that the maturity of a portfolio security be deemed to be the period remaining (from the trade date) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid; the exceptions generally provide that a fund may shorten the maturity date of certain securities to the period remaining until the next readjustment of the interest rate *or* the period remaining until the principal amount can be recovered through demand).

2151 *See* rule 2a-7(a)(8); rule 2a-7(a)(34). The amended definitions require funds to determine a security's maturity in the same way they must calculate for purposes of determining WAL under amended rule 2a-7(d)(1)(iii).

respectively.[2152] Using an interest rate readjustment to determine maturity as permitted under current paragraph (d) for these purposes allows funds to include as daily or weekly liquid assets securities that the fund would not have a legal right to convert to cash in one or five business days. This is not consistent with the purposes of the minimum daily and weekly liquidity requirements, which are designed to increase a fund's ability to pay redeeming shareholders in times of market stress when the fund cannot rely on the market or a dealer to provide immediate liquidity.[2153]

Second, we are adopting as proposed, amendments to require that an agency discount note with a remaining maturity of 60 days or less qualifies as a "weekly liquid asset" only if the note is issued without an obligation to pay additional interest on the principal amount.[2154] Our amendment clarifies that interest-bearing agency notes that are issued at a discount do not qualify.[2155] We understand that these interest-bearing agency notes issued at a discount are extremely rare and do not believe that interest-bearing agency notes are among the very short-term agency discount notes that appeared to be relatively liquid during the 2008 market events

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2152 Current rule 2a-7(a)(8) defines "daily liquid assets" to include (i) cash, (ii) direct obligations of the U.S. government, or (iii) securities that will mature or are subject to a demand feature that is exercisable and payable within one business day. Current rule 2a-7(a)(32) defines "weekly liquid assets" to include (i) cash; (ii) direct obligations of the U.S. government; (iii) securities that will mature or are subject to a demand feature that is exercisable and payable within five business days; or (iv) Government securities (as defined in section 2(a)(16) of the Act) that are issued by a person controlled or supervised by and acting as an instrumentality of the U.S. government that are issued at a discount to the principal amount to be repaid at maturity and have a remaining maturity date of 60 days or less.

2153 *See* 2010 Adopting Release, *supra* note 17, at text following n.213.

2154 *See* rule 2a-7(a)(34)(iii).

2155 We understand that an interest-bearing agency note might be issued at a discount to facilitate a rounded coupon rate (*i.e.*, 2.75% or 3.5%) when yield demanded on the note would otherwise require a coupon rate that is not rounded.

and that we determined could qualify as weekly liquid assets.[2156]

Finally, we are amending as proposed, rule 2a-7 to include in the definitions of daily and weekly liquid assets amounts receivable that are due unconditionally within one or five business days, respectively, on pending sales of portfolio securities.[2157] These receivables, like certain other securities that qualify as daily or weekly liquid assets, provide liquidity for the fund because they give a fund the legal right to receive cash in one to five business days. A fund (or its adviser) could include these receivables in daily and weekly liquid assets if the fund (or its adviser) has no reason to believe that the buyer might not perform.

We continue to understand that the instruments that most money market funds currently hold as daily and weekly liquid assets currently conform to the amendments and that these practices are consistent with positions our staff has taken in informal guidance to money market funds.[2158] Although one commenter noted that it is not always typical for money market funds to include open sales receivables as liquid assets, this commenter also stated that most, if not all, money market funds currently conform to the proposed amendments.[2159] The first two clarifying amendments discussed above are designed to make clear that securities with maturities determined according to interest rate resets and interest bearing agency notes issued at a discount

2156 *See* 2010 Adopting Release, *supra* note 17, at text accompanying and following nn.251-55. Our determination was informed by average daily yields of 30 day and 60 day agency discount notes during the fall of 2008. We believe that interest-bearing agency notes issued at a discount were not included in the indices of the agency discount notes on which we based our analysis or if they were included, there were too few to have affected the indices' averages.

2157 *See* rule 2a-7(a)(8)(iv); rule 2a-7(a)(34)(v).

2158 *See* Staff Responses to Questions about Money Market Fund Reform, (revised Nov. 24, 2010) (http://www.sec.gov/divisions/investment/guidance/mmfreform-imqa.htm) ("Staff Responses to MMF Questions"), Questions II.1, II.2, II.4.

2159 *See* State Street Comment Letter.

do not qualify as daily or weekly liquid assets, as applicable.[2160] Because both of these types of securities are less liquid than the limited types of instruments that do qualify, any funds that alter their future portfolio investments to conform to these requirements would benefit from increased liquidity and ability to absorb larger amounts of redemptions. We continue to believe that by including certain receivables as daily and weekly assets, funds will benefit because the types of assets that can satisfy those liquidity requirements will be increased.

We also continue to believe that there would not be any significant costs associated with our amendments to the definitions of daily and weekly liquid assets. We do not anticipate that there will be operational costs for any funds that currently hold securities that will no longer qualify as daily or weekly assets because those securities likely would mature before the compliance date for our amendments.[2161] Because we continue to believe that most money market funds are currently acting consistently with the amendments that clarify assets that qualify as daily and weekly assets, we do not anticipate that the amendments will have any effect on efficiency or capital formation. To the extent that some funds' practices do not already conform, however, the clarifications may eliminate any competitive advantages that may have resulted from those practices, although we expect that any such advantages would have been small because the amendments make minor clarifying changes to the assets that qualify as daily and weekly liquid assets but do not otherwise remove a significant portion of assets that would otherwise qualify as daily or weekly liquid assets. We did not receive comments suggesting

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2160 *See* rule 2a-7(a)(8)(iii) (definition of daily liquid assets); rule 2a-7(a)(34)(iii) and (iv) (definition of weekly liquid assets).

2161 *See* current rule 2a-7(a)(12)(i) (An eligible security must have a remaining maturity of no more than 397 days); *see infra* section III.N.4 (discussing the compliance date for the clarifying amendments).

otherwise.

2. *Definition of Demand Feature*

We are amending the definition of demand feature in rule 2a-7 as proposed to mean a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise, paid within 397 calendar days of exercise.[2162] Our amendment eliminates the requirement that a demand feature be exercisable at any time on no more than 30 calendar days' notice.[2163]

One commenter addressed this proposed clarifying amendment, stating that it agreed that eliminating the requirement that a demand feature be exercisable at any time on no more than 30 days' notice would clarify the operation of rule 2a-7.[2164] Eliminating the requirement that a demand feature be exercisable at any time on no more than 30 days' notice removes from rule 2a-7 a provision that has become obsolete. In 1986, the Commission expanded the notice period from seven days to 30 days for all types of demand features and emphasized that the notice requirement was at least in part designed to ensure that money market funds maintain adequate liquidity.[2165] Because, as discussed in section II.E.1 above, the 2010 amendments added

2162 *See* rule 2a-7(a)(9).

2163 A demand feature is currently defined to mean (i) a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A demand feature must be exercisable either: (a) At any time on no more than 30 calendar days' notice; or (b) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or (ii) A feature permitting the holder of an ABS unconditionally to receive principal and interest within 397 calendar days of making demand. *See* current rule 2a-7(a)(9).

2164 *See* State Street Comment Letter.

2165 *See* Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)] ("The Commission still believes that some limit must be placed on the extent to which funds relying on the rule will have to anticipate their cash and investment needs more than seven days in advance. However, the Commission believes that funds should be able to invest in the demand instruments that are being marketed with notice periods of up to 30 days, as long as the directors are cognizant of their responsibility to significant new provisions to enhance the liquidity of money market funds, we continue to believe it is unnecessary to continue to require that demand features be exercised at any time on no more than 30 days' notice.[2166] Therefore, the demand feature definition will focus on funds' ability to receive payment within 397 calendar days of exercise of the demand feature.

As stated in the Proposing Release, we believe that eliminating the 30-day notice requirement may improve efficiency by simplifying the operation of rule 2a-7 regarding demand features and providing issuers with more flexibility. One commenter agreed that limiting the 30-day notice requirement may improve efficiency by simplifying the operation of rule 2a-7.[2167] As noted in the Proposing Release, our amendment will permit funds to purchase securities with demand features from a larger pool of issuers. We continue to believe that permitting funds to purchase securities with demand features from a larger pool of issuers may promote competition among issuers and facilitate capital formation because issuers will have a higher number of other issuers to compete against in selling securities to funds, which in turn may incentivize issuers to develop new or additional securities with demand features. We also continue to believe that our amendment will not impose costs on funds, and did not receive comment indicating otherwise.[2168]

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maintain an adequate level of liquidity."). Liquidity was also a concern when the Commission added the definition of demand feature for asset-backed securities and noted that it was done, in part, to make clear the date on which there was a binding obligation to pay (and not just the scheduled maturity). *See* 1996 Adopting Release, *supra* note 1735, at accompanying nn.151-152.

2166 Our amendments are also consistent with a position our staff has taken in the past. *See, e.g.*, SEC No-Action Letter to Citigroup Global Markets, Inc. (May 28, 2009), *available at* http://www.sec.gov/divisions/investment/noaction/2009/citigroupglobal052809-2a7.htm.

2167 *See* State Street Comment Letter.

2168 We note that demand features and guarantees are referenced in rule 12d3-1(d)(7)(v) (providing that, subject to a diversification limitation, the acquisition of a demand feature or guarantee is not an acquisition of securities of a securities related business (that would otherwise be prohibited pursuant to section 12(d)(3) of the Act)) and rule 31a-1(b)(1) (requiring that a fund's detailed records of daily purchase and sale records include the name and nature of any demand feature provider or guarantor). We do not believe that our amendment will provide any benefits or impose any costs with respect to these rules, other than those

One commenter agreed that it did not anticipate any additional cost to the industry in connection with this amendment.[2169]

3. *Short-Term Floating Rate Securities*

We are also amending rule 2a-7 as proposed to clarify the method for determining WAL for short-term floating rate securities.[2170] WAL is similar to a fund's WAM, except that WAL is determined without reference to interest rate readjustments.[2171] Under current rule 2a-7, a short-term *variable* rate security, the principal of which must unconditionally be paid in 397 calendar days or less, is "deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand."[2172] A short-term *floating* rate security, the principal amount of which must unconditionally be paid in 397 calendar days or less, is "deemed to have a maturity of one day" because the interest rate for a floating rate security will change on any date there is a change in the specified interest rate.[2173]

Despite the difference in wording of the maturity-shortening provisions for floating rate and variable rate securities, the Commission has always intended for these provisions to work in

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described above. We also are updating the cross references to the definition of the terms "demand feature" and "guarantee" in rule 12d3-1(d)(7)(v), which defines these terms by reference to rule 2a-7 (replacing the references to "rule 2a-7(a)(8)" and "rule 2a-7(a)(15)" with "§ 270.2a-7(a)(9)" and "§ 270.2a-7(a)(18)") and rule 31a-1(b)(1) (replacing the references to "rule 2a-7(a)(8)" and "rule 2a-7(a)(15)" with "§ 270.2a-7(a)(9)" and "§ 270.2a-7(a)(18)").

2169 *See* State Street Comment Letter.

2170 *See* rule 2a-7(i)(4).

2171 *See* current rule 2a-7(c)(2)(iii).

2172 *See* current rule 2a-7(d)(2).

2173 *See* current rule 2a-7(d)(4). Rule 2a-7 distinguishes between floating rate and variable rate securities based on whether the securities' interest rate adjusts (i) when there is a change in a specified interest rate (floating rate securities), or (ii) on set dates (variable rate securities); current rule 2a-7(a)(15) (defining "floating rate security"); current rule 2a-7(a)(31) (defining "variable rate security").

parallel and provide the same results.[2174] The omission of an explicit reference to demand features in the maturity-shortening provision for short-term floating rate securities, however, has created uncertainty in determining the maturity of short-term floating rate securities with a demand feature for purposes of calculating a fund's WAL.[2175] Therefore, we are amending rule 2a-7(d)(4) to provide that, for purposes of determining WAL, a short-term floating rate security shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.[2176]

As stated in the Proposing Release, we understand that most money market funds currently determine maturity for short-term floating rate securities consistent with our amendment.[2177] Although one commenter noted that it does not determine maturity for short-term floating rate securities in the manner consistent with the proposed amendment and instead uses the rate reset date regardless of the type of security, this commenter did state that most, if not all, money market funds currently conform to the proposed clarifying amendments.[2178] This commenter also noted that it agreed that there would be minimal cost related to the proposed amendment.[2179] Accordingly, we continue to believe that the amendment will likely not result in costs to most funds and that to the extent a fund may not already act consistently with our

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2174 *See* 1996 Adopting Release, *supra* note 1735, at n.154 (the maturity of a floating rate security subject to a demand feature is the period remaining until principal can be recovered through demand).

2175 Long-term floating rate securities that are subject to a demand feature are deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand. *See* current rule 2a-7(d)(5).

2176 *See* rule 2a-7(i)(4).

2177 Such a determination would be consistent with informal guidance that the staff has provided. *See* Investment Company Institute, Request for Interpretation under rule 2a-7 (Aug. 10, 2010) (incoming letter and response) at http://www.sec.gov/divisions/investment/noaction/2010/ici081010.htm.

2178 *See* State Street Comment Letter.

2179 *Id.*

amendment, the amendment will likely not result in significant costs to such a fund. Any funds that currently limit or avoid investments in short-term floating rate securities because they would look to the security's stated final maturity date rather than the demand feature for purposes of determining WAL (which could significantly increase the WAL) may benefit if they increase investments in short-term floating rate securities that are higher yielding than alternative investments in the fund's portfolio. To the extent that those funds may have experienced any competitive yield disadvantage because they limited or avoided these investments, the amendments should address those effects. Because we continue to believe that most funds currently interpret the maturity requirements as we provide in our amendments, we believe that although our changes may produce benefits, these benefits are not quantifiable because we cannot predict the extent to which, absent our amendments, funds may have decided to interpret the maturity requirements differently in the future. For those funds that do not currently interpret the maturity requirements as we provide in our amendments, we are unable to estimate any quantifiable benefits because we are unable to predict the extent to which a fund may increase investments in short-term floating rate securities that are higher yielding than alternative investments in the fund's portfolio, and did not receive any comments on such issue. We also believe that our amendments will not result in a significant, if any, impact on efficiency or capital formation. We did not receive any comments suggesting otherwise.

4. Second Tier Securities

In 2010, we amended rule 2a-7 to limit money market funds to acquiring second tier securities with remaining maturities of 45 days or less.[2180] As discussed in the Proposing

[2180] *See* 2010 Adopting Release, *supra* note 17, at nn.65-69 and accompanying text.

Release, our analysis in adopting this requirement was focused primarily on second tier securities' credit risk, credit spread risk, and liquidity, all of which are more appropriately measured by the security's final legal maturity, rather than its maturity recognizing interest rate readjustments, which focuses on interest rate risk. Thus to state more clearly the way in which this limitation operates, we are amending rule 2a-7 as proposed to state specifically that the 45-day limit applicable to second tier securities must be determined without reference to the maturity-shortening provisions in rule 2a-7 for interest rate readjustments.[2181]

We continue to believe that most money market funds currently determine the remaining maturity for second tier securities consistent with this amendment. Accordingly, we continue to believe that our amendment will likely not result in costs to funds or impact competition, efficiency, or capital formation. In cases where the 45-day limit applicable to second tier securities is determined with reference to the maturity-shortening provisions for interest rate adjustments for certain funds, such funds that alter their future portfolio investments to conform to this amendment may benefit from increased liquidity. In addition, as we noted in the Proposing Release, any funds that currently hold securities that would no longer qualify as second tier securities would not incur costs because those securities likely would mature before the compliance date for our amendments.[2182] We did not receive any comments suggesting otherwise.

N. Compliance Dates

The compliance dates for our amendments are set forth below. The compliance date for

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2181 *See* rule 2a-7(d)(2)(ii).

2182 *See infra* section III.N.4 (discussing the compliance date for the clarifying amendments).

our floating NAV and liquidity fees and gates amendments is [INSERT DATE 2 YEARS AFTER EFFECTIVE DATE]. The compliance date for new Form N-CR is [INSERT DATE 9 MONTHS AFTER EFFECTIVE DATE] and the compliance date for our diversification, stress testing, disclosure, Form PF, Form N-MFP, and clarifying amendments is [INSERT DATE 18 MONTHS AFTER EFFECTIVE DATE]. If any provision of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

1. Compliance Date for Amendments Related to Liquidity Fees and Gates

The compliance date for our amendments related to liquidity fees and gates, including any related amendments to disclosure, is [INSERT DATE 2 YEARS AFTER EFFECTIVE DATE].[2183] We are adopting a compliance period of 2 years for money market funds to implement the fees and gates amendments instead of the proposed one-year compliance period. One commenter argued that the compliance period for our fees and gates amendments should be reduced.[2184] Several commenters, however, argued that our fees and gates amendments require at least 2 years to implement.[2185] For example, one commenter stated that the multiple programming requirements and costs involved suggest that 2 years is a reasonable amount of time to require implementation of fees and gates.[2186] In addition, a few commenters

2183 We expect a fund to make any related changes to disclosure at the time the fund implements the amendments related to fees and gates.

2184 *See* Santoro Comment Letter.

2185 *See, e.g.,* Dreyfus Comment Letter; UBS Comment Letter.

2186 *See* Dreyfus Comment Letter.

recommended extending the compliance period for fees and gates to 3 years.[2187] After further consideration, we have decided to extend the compliance period to 2 years.

We expect that providing a longer compliance period will allow additional time for money market funds and their sponsors and service providers to conduct the requisite operational changes to their systems to implement these provisions, and for fund sponsors to restructure or establish new money market funds if they choose to rely on an available exemption.[2188] It also will provide a substantial amount of time for money market fund shareholders to consider the reforms and make any corresponding changes to their investments. In addition, we have decided to adopt a two-year compliance period in order to provide a uniform compliance date for the floating NAV and fees and gates amendments, which we believe will provide money market funds with a smoother transition and prevent funds from having to make various operational and compliance changes multiple times. Accordingly, the compliance date is 2 years after the effective date of the adoption of the amendments to rule 2a-7(c)(2) and other related provisions of rule 2a-7 that apply to the liquidity fees and gates amendments, rule 22e-3(a)(1) and (d), rule 30b1-7, rule 30b1-8, rule 482(b)(3)(i) and (b)(4), Parts E – G of Form N-CR, Form N-MFP and Items 3, 4(b)(1), and 16(g)(1) of Form N-1A.

2. *Compliance Date for Amendments Related to Floating NAV*

The compliance date for our amendments related to floating NAV, including any related amendments to disclosure, is [INSERT DATE 2 YEARS AFTER EFFECTIVE DATE].[2189] We

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2187 *See* Fidelity Comment Letter.

2188 *See, e.g.*, Fidelity Comment Letter (stating that, as the SEC acknowledges, in addition to the requisite systems modifications that fund sponsors and service providers must implement, many fund sponsors may need to restructure or establish new money market funds if they chose to rely on any exemptions available).

2189 We expect a fund to make any related changes to disclosure at the time the fund implements the are adopting, as proposed, a compliance period of 2 years for money market funds to implement the floating NAV amendments. A few commenters stated that they agreed that the transition period for the floating NAV amendments should be at least 2 years.[2190] Most commenters, however, argued for a compliance period longer than the proposed two-year period,[2191] with some commenters specifically arguing that the floating NAV amendments require at least 3 years to implement.[2192] Several commenters suggesting a longer compliance period argued that adopting a floating NAV would require significant operational modifications.[2193] In addition, many of the commenters recommending a longer compliance period argued that the relevant tax and accounting issues should be resolved by the appropriate regulator well before the compliance date of any final money market fund reform.[2194] As we discuss above in section III.B.6, we have been informed that, the Treasury Department and the IRS today will propose new regulations and issue a revenue procedure (with an effective date of 60 days after publication of today's reforms in the Federal Register) that address relevant tax and accounting issues associated with our amendments.[2195] A two-year compliance period also will allow time for the Commission to consider finalizing rules removing NRSRO ratings from rule 2a-7, so that funds could make many of the compliance-related changes at one time.

After further consideration, we believe it is appropriate to adopt a compliance period of 2

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amendments related to floating NAV.

[2190] *See, e.g.,* T. Rowe Price Comment Letter; HSBC Comment Letter; Northern Trust Comment Letter.

[2191] *See, e.g.,* BlackRock II Comment Letter; Dreyfus Comment Letter; Fidelity Comment Letter.

[2192] *See, e.g.,* ICI Comment Letter; Goldman Sachs Comment Letter; Legg Mason Comment Letter.

[2193] *See, e.g.,* ICI Comment Letter; Legg Mason & Western Asset Comment Letter.

[2194] *See, e.g.,* BlackRock II Comment Letter; Fidelity Comment Letter; J.P. Morgan Comment Letter; ABA Business Law Section Comment Letter.

[2195] *See supra* section III.B.6.

years. We expect that a two-year compliance period will provide time for funds and their shareholders to make any operational modifications necessary to transition to a floating NAV. In addition, we expect that a two-year compliance period will allow time for funds to implement any needed changes to their investment policies and train staff, and also provide time for investors to analyze and consider how they might wish to adjust their cash management strategies. A two-year compliance period also will allow funds to reorganize their operations and establish new funds to meet the definition of a retail money market fund, to the extent necessary. Accordingly, the compliance date is 2 years after the effective date of the adoption of the amendments to rule 2a-7(c) and other related provisions of rule 2a-7 that apply to the floating NAV amendments, rule 22e-3(a)(1) and (d), rule 30b1-7, rule 482(b)(3)(i) and (b)(4), Form N-MFP and Item 4(b)(1) of Form N-1A.

3. *Compliance Date for Rule 30b1-8 and Form N-CR*

The compliance date for rule 30b1-8, Form N-CR, and the related website disclosure[2196] is [INSERT DATE 9 MONTHS AFTER EFFECTIVE DATE]. We received no comments specifically addressing the compliance date for rule 30b1-8, Form N-CR or the related website disclosure. After reviewing the operational considerations as well as the significant interest of investors and the Commission in receiving this information, we are adopting, as proposed, a compliance period of 9 months.

We are eliminating, as proposed, the provision in current rule 2a-7 that requires money market funds to report defaults or events of insolvency to the Commission by email, because it would duplicate Part B (default or event of insolvency of portfolio security issuer) of Form N-

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[2196] *See* rule 2a-7(h)(10)(v) (website disclosure of certain information required to be reported in Form N-CR).

CR.[2197] We are also eliminating, as proposed, the provision in current rule 2a-7 that requires money market funds to disclose to the Commission by email instances when a sponsor supports a fund by purchasing a security pursuant to rule 17a-9, because it would duplicate Part C (provision of financial support to fund) of Form N-CR.[2198] Money market funds will continue to be required to comply with these email notification requirements in rule 2a-7 until the date in which money market funds are required to comply with Part B and Part C of Form N-CR. Accordingly, the effective date of removal of the email notification requirements in rule 2a-7 is 9 months after the effective date of the adoption of Part B and Part C of Form N-CR.[2199]

We note that Part E (imposition of liquidity fee), Part F (suspension of fund redemptions) and Part G (removal of liquidity fees and/or resumption of fund redemptions) of Form N-CR are disclosure items specifically related to our liquidity fees and gates amendments and therefore would also have a conforming compliance period of 2 years. Accordingly, the compliance date for Parts E - G of Form N-CR and the related website disclosure requirements pursuant to rule 2a-7(h)(10)(v) is 2 years after the effective date of the adoption of Part E - G of Form N-CR and rule 2a-7(h)(10)(v). The compliance date for all other Parts of Form N-CR is 9 months. Accordingly, the compliance date for rule 30b1-8, Parts A - D and Part H of Form N-CR, and the related website disclosure requirements pursuant to rule 2a-7(h)(10)(v) is 9 months after the effective date of the adoption of rule 30b1-8, Parts A - D and Part H of Form N-CR and rule 2a-7(h)(10)(v).

2197 *See* current rule 2a-7(7)(iii)(A).

2198 *See* current rule 2a-7(7)(iii)(B).

2199 We note that a money market fund need not comply with the email notification requirements prior to the effective date of removal if the money market fund instead elects to comply with the requirements of Part B and Part C of Form N-CR, as applicable.

4. *Compliance Date for Diversification, Stress Testing, Disclosure, Form PF, Form N-MFP, and Clarifying Amendments*

The compliance date for amendments that are not specifically related to either floating NAV or liquidity fees and gates, including amendments to diversification, stress testing, disclosure that are not specifically related to either floating NAV or liquidity fees and gates, Form PF, Form N-MFP, and clarifying amendments is [INSERT DATE 18 MONTHS AFTER EFFECTIVE DATE]. We are adopting an 18 month compliance period for money market funds to implement these amendments instead of the proposed 9 month compliance period. As discussed above, disclosure amendments that relate to the floating NAV or liquidity fees and gates amendments will have a two-year compliance period. For disclosure amendments that are not specifically related to the floating NAV or liquidity fees and gates amendments, we are adopting an 18 month compliance period. These disclosure amendments include amendments to Form N-1A requiring historical disclosure of affiliate financial support,[2200] and amendments to rule 2a-7 requiring certain website disclosure of portfolio holdings and other fund information.[2201] Several commenters argued that the compliance period for amendments not relating to floating NAV or liquidity fees and gates should be extended in order for funds to implement the amendments and make any necessary operational changes.[2202] After further consideration, we

2200 *See* Item 16(g)(2) of Form N-1A (historical disclosure of affiliate financial support). For purposes of the required historical disclosure of affiliate financial support, funds will be required only to disclose events that occur on or after the compliance date. *See supra* section III.E.5.

2201 *See* rules 2a-7(h)(10)(i)-(iv). For purposes of the required website disclosure of portfolio holdings and other fund information, funds will be required to disclose such information for the prior six months, even if such information is from prior to the compliance date. *See supra* section III.E.9.

2202 *See, e.g.,* ICI Comment Letter (recommending a minimum of 18 months for funds to comply with the disclosure amendments); UBS Comment Letter (recommending a 12 to 18 month compliance period for all proposed regulatory changes that are not specifically related to either floating NAV or liquidity fees and gates); Dreyfus Comment Letter (recommending a two-year compliance period for amendments that are not specifically related to either floating NAV or liquidity fees and gates).

expect that 18 months will allow additional time for money market funds and their sponsors and service providers to implement any applicable requirements and conduct any requisite operational changes to their systems to implement these provisions.

Accordingly, the compliance date for amendments relating to diversification is 18 months after the effective date of the amendments to rule 2a-7(a)(18) and (d)(3) and other related provisions of rule 2a-7 that apply to the diversification amendments. The compliance date for amendments related to stress testing is 18 months after the effective date of the amendments to rule 2a-7(g)(8) and other related provisions of rule 2a-7 that apply to the stress testing amendments. The compliance date for disclosure amendments not specifically related to either floating NAV or liquidity fees and gates is 18 months after the effective date of the amendments to Item 16(g)(2) of Form N-1A and rule 2a-7(h)(10). The compliance date for amendments to rule 204(b)-1 under the Advisers Act and Form PF is 18 months after the effective date of the amendments to rule 204(b)-1 under the Advisers Act and Form PF. The compliance date for amendments to rule 30b1-7 and Form N-MFP is 18 months after the effective date of the amendments to rule 30b1-7 and Form N-MFP. The compliance date for the clarifying amendments is 18 months after the effective date of the amendments to rule 2a-7 pertaining to the clarifying amendments.

IV. PAPERWORK REDUCTION ACT

Certain provisions of the proposed amendments contain "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[2203] The titles for the existing collections of information are: "Rule 2a-7 under the Investment Company Act of 1940,

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[2203] 44 U.S.C. 3501 through 3521.

money market funds" (Office of Management and Budget ("OMB") Control No. 3235-0268); "Rule 22e-3 under the Investment Company Act of 1940, Exemption for liquidation of money market funds" (OMB Control No. 3235-0658); "Rule 30b1-7 under the Investment Company Act of 1940, Monthly report for money market funds" (OMB Control No. 3235-0657); "Rule 34b-1(a) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading" (OMB Control No. 3235-0346); "Rule 204(b)-1 under the Investment Advisers Act of 1940, Reporting by investment advisers to private funds" (OMB Control No. 3235-0679); "Rule 482 under the Securities Act of 1933, Advertising by an Investment Company as Satisfying Requirements of Section 10" (OMB Control No. 3235-0565); "Form N-1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration statement of open-end management investment companies" (OMB Control No. 3235-0307); "Form N-MFP, Monthly schedule of portfolio holdings of money market funds" (OMB Control No. 3235-0657); and "Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisers" (OMB Control No. 3235-0679). We are also submitting new collections of information for new rule 30b1-8 and new Form N-CR under the Investment Company Act of 1940.[2204] The Commission submitted these collections of information to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Today the Commission is adopting amendments intended to address money market

[2204] We also are proposing additional amendments that do not affect the relevant rules' paperwork collections (*e.g.*, we propose to amend Investment Company Act rule 12d3-1 solely to update cross references in that rule to provisions of rule 2a-7).

funds' susceptibility to heavy redemptions, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks. Our amendments will (i) permit all money market funds to impose a liquidity fee and/or "gate" the fund if a fund's weekly liquidity level falls below the required regulatory amount; (ii) require all non-government money market funds to impose a liquidity fee if the fund's weekly liquidity level falls below a designated regulatory threshold, unless the fund's board determines that imposing such a fee is not in the best interests of the fund; (iii) require, as a targeted reform, that institutional non-government money market funds sell and redeem shares based on the current market-based value of the securities in their underlying portfolios, rounded to four decimal places (*e.g.*, $1.0000), *i.e.*, transact at a floating NAV; and (iv) require that money market funds adopt other amendments designed to make money market funds more resilient, including increasing diversification of their portfolios, enhancing their stress testing, and improving transparency through enhanced disclosure. The amendments further require investment advisers to certain unregistered liquidity funds, which can resemble money market funds, to provide additional information about those funds to the SEC. We discuss below the collection of information burdens associated with these amendments.

A. Rule 2a-7

A number of the amendments we are adopting today, including our liquidity fees and gates reform, as well as our floating NAV reform, affect rule 2a-7. These amendments to rule 2a-7 also amend or establish new collection of information burdens by: (a) requiring money market funds to be diversified with respect to the sponsors of asset-backed securities by deeming the sponsor to guarantee the asset-backed security unless the fund's board of directors makes a finding otherwise; (b) requiring that "retail money market funds" adopt and implement policies and procedures reasonably designed to limit beneficial ownership of the fund to natural persons; (c) requiring that "government money market funds" amend policies and procedures to reflect the 0.5% *de minimis* non-conforming basket; (d) requiring money market funds' boards to make and document a number of determinations regarding the imposition of fees and gates when weekly liquid assets fall below a certain threshold; (e) replacing the requirement that funds promptly notify the Commission via electronic mail of defaults and other events with disclosure on new Form N-CR; (f) amending the stress testing requirements; and (g) amending the disclosures that money market funds are required to post on their websites. Unless otherwise noted, the estimated burden hours discussed below are based on estimates of Commission staff with experience in similar matters. Several of the amendments create new collection of information requirements. The respondents to these collections of information are money market funds, investment advisers and other service providers to money market funds, including financial intermediaries, as noted below. The currently approved burden for rule 2a-7 is 517,228 hours.

1. Asset-Backed Securities

Under the amendments we are adopting today, we are requiring that a money market fund treat the sponsors of ABS as guarantors subject to rule 2a-7's 10% diversification limit applicable to guarantee and demand features, unless the fund's board of directors (or its delegate) determines that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity.[2205] The board of directors must adopt written procedures requiring periodic evaluation

[2205] *See* rule 2a-7(a)(18)(ii).

of this determination.[2206] Furthermore, for a period of not less than three years from the date when the evaluation was most recently made, the fund must preserve and maintain, in an easily accessible place, a written record of the evaluation.[2207] These requirements are collections of information under the PRA, and are designed to help ensure that the objectives of the diversification limitations are achieved. The new collection of information is mandatory for money market funds that rely on rule 2a-7, and to the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.[2208]

In the Proposing Release, the Commission estimated that approximately 183 money market funds held asset-backed securities and would have been required to adopt written procedures regarding the periodic evaluation of determinations made by the fund as to ABS not subject to guarantees. The Commission estimated the one-time burden to prepare and adopt these procedures would have been 1,647 hours[2209] at approximately $1.2 million in total time costs for all money market funds.[2210] Amortized over a three-year period, this would have resulted in an average annual burden of 549 hours and time costs of approximately $400,000 for

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2206 *See* rule 2a-7(g)(7).

2207 *See* rule 2a-7(h)(6).

2208 *See, e.g.*, 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8)).

2209 This estimate was based on the following calculation: 8 burden hours to prepare written procedures + 1 burden hour to adopt procedures = 9 burden hours per money market fund required to adopt procedures; 9 burden hours per money market fund x 183 funds expected to adopt procedures = 1,647 total burden hours.

2210 This estimate was based on the following calculation: 183 money market funds x $7,032 in total costs per fund = $1.2 million.

all money market funds.[2211] The Commission estimated that the average annual burden to prepare materials and written records for the boards' required review of new and existing determinations would have been 732 burden hours[2212] and approximately $940,071 in total time costs for all money market funds.[2213] Averaging the initial burden plus the average annual burdens over three years would have resulted in an average annual burden of 1,281 hours and time costs of approximately $1.3 million for all money market funds. The Commission estimated in the Proposing Release that there would have been no external costs associated with this collection of information.

The Commission did not receive any comments on the estimated hour and cost burdens. The Commission has modified the estimated increase in annual burden hours and total time costs that will result from the amendment based on updated industry data. The Commission believes that the written procedures will be developed for all the money market funds in a fund complex by the fund adviser, and that a fund complex will have economies of scale to the extent that there may be more than one money market fund in a complex. Based on its review of reports on Form N-MFP as of February 28, 2014, the Commission estimates that approximately 152 money market funds hold asset-backed securities and will be required to adopt written procedures regarding the periodic evaluation of determinations made by the fund as to ABS not subject to guarantees. The Commission continues to estimate that it will take approximately eight hours of

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2211 This estimate was based on the following calculations: 1,647 burden hours ÷ 3 = 549 average annual burden hours; $1.2 million burden costs ÷ 3 = $400,000 average annual burden cost.

2212 This estimate was based on the following calculation: 4 burden hours per money market fund x 183 funds = 732 total burden hours.

2213 This estimate was based on the following calculation: 183 money market funds x $5,137 in total costs per fund = $940,071.

a fund attorney's time to prepare the procedures and one hour for a board to adopt the procedures. Therefore, the Commission estimates the one-time burden to prepare and adopt these procedures will be approximately nine hours per money market fund, at a time cost of $7,440 per fund.[2214] The Commission further estimates the one-time burden to prepare and adopt these procedures will be 1,368 hours[2215] at $1,130,880 in total time costs for all money market funds.[2216] Amortized over a three-year period, this will result in an average annual burden of 456 hours and time costs of $376,960 for all funds.[2217] The Commission continues to estimate that a money market fund that will be required to adopt such written procedures will spend, on an annual basis, (i) two hours of a fund attorney's time to prepare materials for the board's review of new and existing determinations, (ii) one hour for the board to review those materials and make the required determinations, and (iii) one hour of a fund attorney's time per year, on average, to prepare the written records of such determinations.[2218] Therefore, the Commission

2214 This estimate is based on the following calculation: (8 hours x $380 per hour for an attorney = $3,040) + (1 hour x $4,400 per hour for a board of 8 directors = $4,400) = $7,440. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,400. All other estimated wage figures discussed here and throughout section IV of this Release are based on published rates have been taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, *available at* http://www.sifma.org/research/item.aspx?id=8589940603, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

2215 This estimate is based on the following calculation: 8 burden hours to prepare written procedures + 1 burden hour to adopt procedures = 9 burden hours per money market fund required to adopt procedures; 9 burden hours per money market fund x 152 funds expected to adopt procedures = 1,368 total burden hours.

2216 This estimate is based on the following calculation: 152 money market funds x $7,440 in total costs per fund complex = $1,130,880.

2217 This estimate is based on the following calculations: 1,368 burden hours ÷ 3 = 456 average annual burden hours; $1,130,880 burden costs ÷ 3 = $376,960 average annual burden cost.

2218 This estimate includes documenting, if applicable, the fund board's determination that the fund is not relying on the fund sponsor's financial strength or its ability or willingness to provide liquidity or other credit support to determine the ABS's quality or liquidity. *See* rule 2a-7(a)(18)(ii) and rule 2a-7(h)(6).

estimates that the average annual burden to prepare materials and written records for a board's required review of new and existing determinations will be approximately four hours per fund[2219] at a time cost of approximately $5,540 per fund.[2220] The Commission therefore estimates the annual burden will be 608 burden hours[2221] and $842,080 in total time costs for all money market funds.[2222] Adding the one-time burden, amortized over three years, to prepare and adopt procedures with the annual burden to prepare materials for determinations will result in a total amortized annual burden of 1,064 hours and time costs of $1,219,040 for all funds.[2223] We estimate that there are no external costs associated with this collection of information.

2. *Retail and Government Funds*

i. Retail Funds

Under our floating NAV reform, a retail money market fund—which means a money market fund that adopts and implements policies and procedures reasonably designed to limit beneficial owners to natural persons—will be allowed to continue to maintain a stable NAV through the use of amortized cost valuation and/or penny-rounding pricing. The requirement that retail money market funds adopt policies and procedures is a collection of information under the PRA. The new collections of information are mandatory for money market funds that seek to

2219 This estimate is based on the following calculation: 2 hours to adopt + 1 hour for board review + 1 hour for record preparation = 4 hours per year.

2220 This estimate is based on the following calculations: (3 hours x $380 per hour for an attorney = $1,140) + (1 hour x $4,400 per hour for a board of 8 directors = $4,400) = $5,540.

2221 This estimate is based on the following calculation: 4 burden hours per money market fund x 152 funds = 608 total burden hours.

2222 This estimate is based on the following calculation: 152 money market funds x $5,540 in total costs per fund = $842,080.

2223 This estimate is based on the following calculation: (1,368 burden hours ÷ 3 = 456 average annual burden hours) + 608 annual burden hours = 1,064 hours; ($1,130,880 burden costs ÷ 3 = $376,960 average annual burden cost) + $842,080 annual time costs = $1,219,040.

qualify as "retail money market funds" under rule 2a-7 as amended,[2224] and to the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.[2225]

For purposes of the PRA, the Commission estimates that approximately 55 money market fund complexes will seek to qualify as retail money market funds under rule 2a-7 and therefore be required to adopt written policies and procedures reasonably designed to limit beneficial owners to natural persons.[2226] We continue to estimate, as we did in the Proposing Release, that it will take approximately 12 hours of a fund attorney's time to prepare the procedures and one hour for a board to adopt the procedures.[2227] The Commission did not receive any comments on the estimated hour and cost burdens. Accordingly, we have modified our estimate of the total time cost that will result from the amendments based on updated industry data and estimate an initial time cost of approximately $8,960 per fund complex.[2228] Therefore, we estimate the one-time burden to prepare and adopt these procedures will be approximately 715 hours[2229] at

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2224 *See* rule 2a-7(a)(25); 2a-7(c)(1)(i).

2225 *See supra* note 2208.

2226 For purposes of the PRA, staff estimates that those money market funds that self-reported as "retail" funds as of February 28, 2014 (based on iMoneyNet data) will likely seek to qualify as retail money market funds under amended rule 2a-7. Based on iMoneyNet data, these 55 fund complexes managed 195 self-reported "retail" money market funds.

2227 Staff believes that the burden associated with drafting and adopting policies and procedures reasonably designed to limit beneficial ownership to natural persons will be approximately the same as the burden that would have been required under our proposal (requiring that funds adopt and implement procedures reasonably designed to allow the conclusion that the omnibus account holder does not permit any beneficial owner, directly or indirectly, to redeem more than the daily permitted amount).

2228 This estimate is based on the following calculation: ([12 hours x $380 per hour for an attorney = $4,560] + [1 hour x $4,400 per hour for a board of 8 directors = $4,400] = $8,960).

2229 This estimate is based on the following calculation: 12 burden hours to prepare written procedures + 1 burden hour to adopt procedures = 13 burden hours per money market fund complex; 13 burden hours per fund complex x 55 fund complexes = 715 total burden hours for all fund complexes.

$492,800 in total time costs for all fund complexes.[2230] Amortized over a three year period, this will result in an average annual burden of 238 hours and time costs of $164,267 for all funds.[2231] We estimate that there are no external costs associated with this collection of information.

ii. Government Funds

Under today's amendments, government money market funds will not be required to implement a floating NAV or fees and gates. We define a government money market fund to mean a fund that invests at least 99.5% of its total assets in cash, government securities, and/or repurchase agreements collateralized by cash or government securities. Currently, a government money market fund is permitted to invest up to 20% of its total assets in non-government assets.[2232] Under our amendments, a government money market fund will no longer be permitted to invest up to 20% of its total assets in non-government assets; rather, these funds will be permitted a 0.5% *de minimis* non-conforming basket in which the fund may invest in non-government assets. Accordingly, we anticipate that government money market funds will need to amend their existing policies and procedures to reflect the new 0.5% *de minimis* basket.

For purposes of the PRA, the Commission estimates that approximately 60 money market fund complexes will seek to qualify as government money market funds under rule 2a-7 and therefore be required to amend their written policies and procedures to reflect the 0.5% de

2230 This estimate is based on the following calculation: 55 fund complexes x $8,960 in total costs per fund complex = $492,800.

2231 This estimate is based on the following calculation: 715 burden hours ÷ 3 = 238 average annual burden hours; $492,800 burden costs ÷ 3 = $164,267 average annual burden cost.

2232 *See supra* note 628 (defining "non-government assets"); *see also supra* note 629 (noting that the "names rule" effectively limits government funds from investing more than 20% of total assets in non-government assets).

minimis basket.[2233] We estimate that it will take approximately one hour of a fund attorney's time to amend the procedures and 0.5 hours for a board to adopt the amended procedures. Accordingly, we estimate the total initial time cost that will result from the amendments will be approximately $2,580 per fund complex.[2234] Therefore, we estimate the one-time burden to amend these procedures will be approximately 90 hours[2235] at $154,800 in total time costs for all fund complexes.[2236] Amortized over a three-year period, this will result in an average annual burden of approximately 30 hours and time costs of $51,600 for all funds.[2237] We estimate that there are no external costs associated with this collection of information.

3. *Board Determinations – Fees and Gates*

Under the fees and gates amendments, if a money market fund's weekly liquid assets fall below 30% or 10%, respectively, of its total assets, the fund's board may be required to make and document a number of determinations regarding the imposition of fees and gates,[2238] including (i) whether to impose a liquidity fee, and if so, what the amount of the liquidity fee should be (not to exceed 2%); (ii) whether to impose a redemption gate; (iii) when to remove a

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2233 This estimate is based on Form N-MFP data as of February 28, 2014.

2234 This estimate is based on the following calculation: ([1 hours x $380 per hour for an attorney = $380] + [0.5 hours x $4,400 per hour for a board of 8 directors = $2,200] = $2,580).

2235 This estimate is based on the following calculation: 1 burden hours to amend written procedures + 0.5 burden hours to adopt procedures = 1.5 burden hours per money market fund complex; 1.5 burden hours per fund complex x 60 fund complexes = 90 total burden hours for all fund complexes.

2236 This estimate is based on the following calculation: 60 fund complexes x $2,580 in total costs per fund complex = $154,800.

2237 This estimate is based on the following calculation: 90 burden hours ÷ 3 = 30 average annual burden hours; $154,800 burden costs ÷ 3 = $51,600 average annual burden cost.

2238 As discussed in section III.A above, after a fund's weekly liquid assets have dropped below 30%, a fund's board may determine that it is in the best interests of the fund to impose a liquidity fee or redemption gate. After a fund's weekly liquid assets have dropped below 10%, a fund must impose a 1% a liquidity fee on all redemptions, unless its board determines it is not in the best interests of the fund to do so. *See* rule 2a-7(c)(2)(i) and (ii).

liquidity fee put in place (subject to other rule requirements); and (iv) when to lift a redemption gate put in place (subject to other rule requirements).[2239] This requirement is a collection of information under the PRA, and is designed to ensure that a fund that imposes a fee or gate does so when it is in its best interests (as determined by its board). This new collection of information is mandatory for money market funds that rely on rule 2a-7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information will be kept confidential, subject to the provisions of applicable law.[2240]

As proposed, the fees and gates amendments would have required the same collection of information if a money market fund's weekly liquid assets fell below 15% of its total assets. As discussed in the Proposing Release, Commission staff analysis of Form N-MFP data showed that, between March 2011 and October 2012, five prime money market funds had weekly liquid assets below 15% of total assets.[2241] As set forth in the Proposing Release, the same Commission staff analysis of Form N-MFP data shows that 138 prime money market funds had weekly liquid assets below 30% of total assets during this same period.[2242] In the proposal, the Commission estimated approximately 28 annual burden hours,[2243] and a total time cost of

2239 *See id.*

2240 *See supra* note 2208.

2241 *See* Proposing Release, *supra* note 25, at 548-49 (showing that, during the period, four funds dropped below 15% weekly liquid assets and one fund dropped below 10% weekly liquid assets).

2242 *See* Proposing Release, *supra* note 25, at 177. This same analysis shows that one prime money market fund had weekly liquid assets below 10% between March 2011 and October 2012. Because 30% is the higher threshold, the fund that dropped below 10% weekly liquid assets during the period would also be included within the 138 funds that crossed below 30% weekly liquid assets during the period.

2243 This estimate was based on the following calculation: 7 burden hours per money market fund x 4 funds = 28 total burden hours.

$39,580 for all money market funds.[2244] We did not receive any comments on the estimated hour and cost burdens related to board determinations under the fees and gates amendments.

The Commission continues to estimate that the affected money market funds that will satisfy the triggering event will spend, on an annual basis, (i) four hours of a fund attorney's time to prepare materials for the board's determinations, (ii) two hours for the board to review those materials and make the required determinations, and (iii) one hour of a fund attorney's time per year, on average, to prepare the written records of such determinations.[2245] Therefore, the Commission estimates that the average annual burden to prepare materials and written records for a board's required determinations will be approximately seven hours per fund,[2246] the same as proposed, at a time cost of approximately $10,700 per fund.[2247] The estimated time cost has increased from the proposal, which estimated $9,895 per fund, as a result of updated industry data.[2248] Based on a total of 83 funds per year that will have weekly liquid assets below 30% of total assets,[2249] the Commission estimates the annual burden will be approximately 581 burden

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2244 This estimate was based on the following calculation: 4 money market funds x $9,895 in total costs per fund complex = $39,580.

2245 This estimate includes preparing and evaluating materials relevant to the determinations required in imposing (and removing) either or both liquidity fees and redemption gates. *See supra* note 2239.

2246 This estimate is based on the following calculation: 4 hours to prepare materials + 2 hours for board review + 1 hour for record preparation = 7 hours per year.

2247 This estimate is based on the following calculation: [5 hours x $380 per hour for an attorney = $1900] + [2 hours x $4,400 per hour for a board of 8 directors = $8,800] = $10,700.

2248 The proposal estimated $379 per hour for an attorney based on published rates that had been taken from SIFMA's Management and Professional Earnings in the Securities Industry 2012, *available at* http://www.sifma.org/research/item.aspx?id=8589940603, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The proposal also estimated that the average cost of board of director time was $4,000 per hour for the board as a whole based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,400.

2249 This estimate is based on the following calculation: (138 funds ÷ 20 months) x 12 months = 83 funds per year.

hours,[2250] and $888,100 in total time costs for all money market funds.[2251]

The increases in annual burden hours and total time costs from the proposal are largely due to the increase in the estimated number of funds that will be subject to collection of information (from four to 83) as a result of the higher weekly liquid assets threshold for imposition of fees and gates. We estimate that there are no external costs associated with this collection of information.

4. *Notice to the Commission*

Our amendments also eliminate, as proposed, the requirements under rule 2a-7 relating to notifications money market funds must make to the Commission upon the occurrence of certain events. Specifically, the amendments eliminate the requirements for money market funds to promptly notify the Director of Investment Management or its designee by electronic mail (i) of any default or event of insolvency with respect to the issuer of one or more portfolio securities (or any issuer of a demand feature or guarantee), where immediately before the default the securities comprised one half of one percent or more of the fund's total assets;[2252] and (ii) of any purchase of a security from the fund by an affiliated person in reliance on rule 17a-9 under the Investment Company Act.[2253] The Proposing Release also estimated that approximately 20 money market funds per year previously would have been required to provide the notification of

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2250 This estimate is based on the following calculation: 7 burden hours per fund x 83 funds = 581 burden hours.

2251 This estimate is based on the following calculation: $10,700 in total costs per fund x 83 money market funds = $888,100.

2252 *See* current rule 2a-7(c)(7)(iii)(A) (requiring that the notice include a description of the actions the money market fund intends to take in response to the event).

2253 *See* current rule 2a-7(c)(7)(iii)(B) (requiring that the notice include identification of the security, its amortized cost, the sale price, and the reasons for the purchase).

an event of default or insolvency, and that each such notification would entail 0.5 burden hours. The Commission also estimated that approximately 25 money market fund complexes per year previously would have been required to provide notification of a purchase of a portfolio security in reliance on rule 17a-9, and each such notification would entail one burden hour. Based on these estimates, we calculated that the elimination of these requirements would reduce the current annual burden by approximately 10 hours for notices of default or insolvency, at a total time cost savings of $3,790,[2254] and by approximately 25 hours for notices of purchases in reliance on rule 17a-9, at a total time cost savings of $9,475.[2255]

No commenters addressed the number of money market funds that would be affected by the proposal or the estimated reduction in annual burden hours or total time cost savings that would result from the proposed amendments. Accordingly, the Commission has not modified the estimated reduction in annual burden hours associated with the amendments, although it has modified its estimate of the total hour burden reduction that will result from the amendments based on updated industry data. Given these estimates, the amendments will reduce the current annual burden by approximately 10 hours for notices of default or insolvency, at a total time cost reduction of $3,800,[2256] and by approximately 25 hours for notices of purchases in reliance on rule 17a-9, at a total time cost reduction of $9,500.[2257] Therefore, the total reduction in burden is

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2254 This estimate was based on the following calculations: 20 funds x 0.5 hour reduction in hours per fund = reduction of 10 hours; 10 burden hours x $379 per hour for an attorney = $3,790.

2255 This estimate was based on the following calculations: 25 fund complexes x 1 hour reduction in hours per fund = reduction of 25 hours; 25 burden hours x $379 per hour for an attorney = $9,475.

2256 This estimate is based on the following calculations: 20 funds x 0.5 hour reduction in hours per fund = reduction of 10 hours; 10 burden hours x $380 per hour for an attorney = $3,800.

2257 This estimate is based on the following calculations: 25 fund complexes x 1 hour reduction in hours per fund = reduction of 25 hours; 25 burden hours x $380 per hour for an attorney = $9,500.

35 hours at a total time cost of $13,300.[2258] We estimate that there are no external costs associated with this collection of information.

5. *Stress Testing*

We are adopting amendments to the stress testing requirements under rule 2a-7. Specifically, we are adopting reforms to the current stress testing provisions that will require funds to test their ability to maintain weekly liquid assets of at least 10% and to minimize principal volatility in response to specified hypothetical events that include (i) increases in the level of short-term interest rates, (ii) a downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio, and (iii) the widening of spreads in various sectors to which the fund's portfolio is exposed, each in combination with various increases in shareholder redemptions. A written copy of the procedures and any modifications thereto, must be maintained and preserved for a period of not less than six years following the replacement of such procedures with new procedures, the first two years in an easily accessible place.[2259] In addition, the written procedures must provide for a report of the stress testing results to be presented to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results).[2260] These requirements are collections of information under the PRA, and are designed, in part, to address disparities in the quality and comprehensiveness of stress tests. The collection of information is mandatory for money market funds that rely on rule 2a-7, and to the extent that the Commission receives confidential

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2258 This estimate is based on the following calculation: 10 hours (reduction for notices of default or insolvency) + 25 hours (reduction for notices of purchases in reliance on rule 17a-9) = 35 hours total reduction; $3,800 (reduction for notices of default or insolvency) + $9,500 (reduction for notices of purchases in reliance on rule 17a-9) = $13,300 total reduction.

2259 *See* rule 2a-7(h)(8).

2260 *See* rule 2a-7(g)(8)(ii).

information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.[2261]

In the Proposing Release, we noted that we were proposing to amend the stress testing provisions of rule 2a-7 to enhance the hypothetical events for which a fund (or its adviser) is required to stress test, including: (i) increases (rather than changes) in the general level of short-term interest rates; (ii) downgrades or defaults of portfolio securities, and the effects these events could have on other securities held by the fund; (iii) "widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied"; (iv) other movements in interest rates that may affect the fund's portfolio securities, such as shifts in the yield curve; and (v) combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors.[2262] Under our proposed amendments, floating NAV money market funds would have been required to replace their current stress test for the ability to maintain a stable price per share with a test of the fund's ability to maintain 15% of its total assets in weekly liquid assets.

Based on the proposed amendments to stress testing, the Commission estimated in the Proposing Release that each fund that would have been required to implement the proposed stress testing changes would have to incur an average one-time burden of 92 hours at a time cost of $42,688.[2263] Based on an estimate of 92 funds that would incur this one-time burden,[2264] the

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2261 *See supra* note 2208.

2262 *See* proposed (FNAV) rule 2a-7(g)(7).

2263 Staff estimated that these systems modifications would include the following costs: (i) project planning and systems design (24 hours x $291 (hourly rate for a senior systems analyst) = $6,984); (ii) systems modification integration, testing, installation, and deployment (32 hours x $282 (hourly rate for a senior programmer) = $9,024); (iii) drafting, integrating, implementing procedures and controls (24 hours x $327 (blended hourly rate for assistant general counsel ($467), chief compliance officer ($441), senior EDP

Commission estimated that the aggregate one-time burden for all money market funds to implement the proposed amendments to stress testing would have been 8,464 hours at a total time cost of \$3.9 million.[2265] Amortized over a three year period, this would have resulted in an average annual burden of 2,821 burden hours and \$1.3 million total time cost for all funds.[2266] The Commission estimated in the Proposing Release that there would have been no external costs associated with this collection of information. The Commission did not receive any comments on the estimated hour and cost burdens.

Although we are adopting amendments to the stress testing requirements with modifications from the proposal, the Commission does not believe that the changes from the proposed amendments will directly affect the burden hours or total time costs associated with the requirement that money market funds maintain a written copy of their stress testing procedures, and any modifications thereto, and preserve for a period of not less than six years following the replacement of such procedures with new procedures, the first two years in an easily accessible place. However, the Commission has modified the estimated increase in annual burden hours and total time costs that will result from the amendment based on updated industry data.

We understand that most money market funds, in their normal course of risk management, include many of the elements we are adopting in their stress testing. Nevertheless,

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auditor (\$273) and operations specialist (\$126)) = \$7,848); and (iv) preparation of training materials ((8 hours x \$354 (hourly rate for an assistant compliance director) = \$2,832) + (4 hours (4 hour training session for board of directors) x \$4,000 (hourly rate for board of 8 directors) = \$16,000) = \$18,832). Therefore, staff estimated an average one-time burden of 92 hours (24+32+24+8+4), at a total cost per fund of \$42,688 (\$6,984+\$9,024+\$7,848+\$18,832).

2264 This estimate was based on staff experience and discussions with industry.

2265 This estimate was based on the following calculations: 92 funds x 92 hours per fund = 8,464 hours; 92 funds x \$42,688 = \$3.9 million.

2266 This estimate is based on the following calculations: 8,464 hours ÷ 3 = 2,821 burden hours; \$3.9 million ÷ 3 = \$1.3 million burden cost.

we expect that funds may incur a one-time internal burden to reprogram an existing system to provide the required reports of stress testing results based on our amendments. We believe that the stress testing procedures will be modified for all the money market funds in a fund complex by the fund adviser, and that a fund complex will have economies of scale to the extent that there may be more than one money market fund in a complex. The Commission estimates that each fund that will have to implement the stress testing changes will incur an average one-time burden of 92 hours at a time cost of $43,872.[2267] Based on an estimate of 559 money market funds that will incur this one-time burden,[2268] the Commission estimates that the aggregate one-time burden for all money market funds to implement the amendments to stress testing will be 51,428 hours at a total time cost of $24,524,448.[2269] Amortized over a three year period, this will result in an average annual burden of approximately 17,143 burden hours and $8,174,816 total time cost for all funds.[2270] We estimate that there are no external costs associated with this collection of information.

Each report to the board of directors will include an assessment of the money market

2267 The Commission estimates that these systems modifications will include the following costs: (i) project planning and systems design (24 hours x $260 (hourly rate for a senior systems analyst) = $6,240); (ii) systems modification integration, testing, installation, and deployment (32 hours x $303 (hourly rate for a senior programmer) = $9,696); (iii) drafting, integrating, implementing procedures and controls (24 hours x $319 (blended hourly rate for assistant general counsel ($426), chief compliance officer ($485), senior EDP auditor ($241) and operations specialist ($125)) = $7,656); and (iv) preparation of training materials ((8 hours x $335 (hourly rate for an assistant compliance director) = $2,680) + (4 hours (4 hour training session for board of directors) x $4,400 (hourly rate for board of 8 directors) = $17,600) = $20,280). Therefore, the Commission estimates an average one-time burden of 92 hours (24+32+24+8+4), at a total cost per fund of $43,872 ($6,240+$9,696+$7,656+$20,280).

2268 We increased the estimated number of funds from the Proposing Release based on staff experience and discussions with industry.

2269 This estimate is based on the following calculations: 559 funds x 92 hours per fund = 51,428 hours; 559 funds x $43,872 = $24,524,448

2270 This estimate is based on the following calculations: 51,428 hours ÷ 3 = approximately 17,143 burden hours; $24,524,448 ÷ 3 = $8,174,816.

fund's ability to have invested at least 10% of its total assets in weekly liquid assets and to minimize principal volatility, and an assessment by the fund's adviser of the fund's ability to withstand the events that are reasonably likely to occur within the following year. Under current rule 2a-7, money market funds are required to have written procedures that provide for a report of the stress testing results to be presented to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results). However, because we are amending the type of information that must be included in the report to the board, we have estimated the collection of information burden hours increase and the total time cost increase.

The Commission estimates that it will take on average an additional: (i) two hours of portfolio management time, (ii) one hour of compliance time, (iii) one hour of professional legal time and (iv) 0.5 hours of support staff time, requiring an additional 4.5 burden hours at a time cost of approximately $1,302 per fund.[2271] Under normal circumstances, the report must be provided at the next scheduled board meeting, and the Commission estimates that the report and the adviser's assessment will cover all money market funds in a complex. For purposes of these calculations, the Commission assumes that funds will conduct stress tests no less than monthly. With an average of six board meetings each year, the Commission estimates that the annual burden for regularly scheduled reports will be 27 hours per money market fund.[2272] Under the rule, a report must be provided earlier if appropriate in light of the results of the test. The Commission estimates that as a result of unanticipated changes in market conditions or other

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2271 This estimate is based on the following calculation: (2 hours x $301 per hour for a portfolio manager = $602) + (1 hour x $283 for a compliance manager = $283) + (1 hour x $380 for an attorney = $380) + (0.5 hours x $74 per hour for an administrative assistant = $37) = $1,302.

2272 This estimate is based on the following calculation: (2 hours (portfolio management) + 1 hour (compliance) + 1 hour (legal) + 0.5 hours (support staff)) = 4.5 hours x 6 meetings = 27 hours.

events, stress testing results are likely to prompt additional reports on average four times each year.[2273] Thus, the Commission estimates reports will result in an additional 18 hours for an individual fund each year.[2274] The Commission estimates the total annual burden for all money market funds will be an additional 25,155 hours at a total time cost of $7,278,180.[2275]

Adding the one-time burden, amortized over three years, to implement the stress testing amendments with the annual burden to report the results of the stress tests to the board of will result in a total amortized annual burden of 42,298 hours and time costs of $15,452,996 for all funds.[2276] We estimate that there are no external costs associated with this collection of information.

6. *Website Disclosure*

The amendments we are adopting today require money market funds to disclose certain additional information on their websites. These amendments promote transparency to investors of money market funds' risks and risk management by:

2273 The Commission anticipates that in many years there will be no need for special reports, but that in a year in which there is severe market stress, a fund may report to the board weekly for a period of 3 to 6 months. Such reporting will generate 9 to 18 reports in addition to the regular monthly reports. Assuming that this type of event may occur once every five years, and additional reports will be generated for 6 months, a fund will produce an average of four additional reports per year (18 additional reports ÷ 5 = 3.6 reports).

2274 This estimate is based on the following calculation: 4.5 hours x 4 = 18 hours.

2275 This estimate is based on the following calculation: (27 hours + 18 hours = 45 hours) x 559 money market funds = 25,155 hours and ($1,302 x (6 regularly scheduled reports + 4 additional reports = 10 reports per year) = $13,020 per fund) x 559 funds = $7,278,180.

2276 This estimate is based on the following calculation: (51,428 burden hours ÷ 3 = 17,143 average annual burden hours) + 25,155 annual burden hours = 42,298 hours; ($24,524,448 burden costs ÷ 3 = $8,174,816 average annual burden cost) + $7,278,180 annual time costs = $15,452,996.

- Harmonizing the specific portfolio holdings information that rule 2a-7 requires a fund to disclose on the fund's website with the corresponding portfolio holdings information required to be reported on Form N-MFP;[2277]
- Requiring that a fund disclose on its website a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's daily net inflows or outflows, as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day);[2278]
- Requiring that a fund disclose on its website a schedule, chart, graph, or other depiction showing the fund's daily current NAV per share, as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day);[2279] and
- Requiring a fund to disclose on its website certain information that the fund is required to report to the Commission on Form N-CR regarding the imposition and removal of liquidity fees, the suspension and resumption of fund redemptions, and the provision of financial support to the fund.[2280]

These new collections of information are mandatory for money market funds that rely on rule 2a-7 and are not kept confidential.

a. Disclosure of Portfolio Holdings Information

2277 *See* rule 2a-7(h)(10)(i).

2278 *See* rule 2a-7(h)(10)(ii).

2279 *See* rule 2a-7(h)(10)(iii).

2280 *See* rule 2a-7(h)(10)(v).

We are adopting, largely as proposed, the requirement for a money market fund to disclose on its website certain portfolio holdings information that the fund also will be required to disclose on Form N-MFP. This requirement will harmonize the holdings information that a fund is required to disclose on its website with the corresponding portfolio holdings information required to be reported on Form N-MFP. We anticipate that the burden for each fund to draft and finalize the disclosure that appears on its website will largely be incurred when the fund files Form N-MFP.[2281] In the Proposing Release, the Commission estimated that a fund would incur an additional burden of one hour each time that it updates its website to include the new disclosure. Using an estimate of 586 money market funds that would be required to include the proposed new portfolio holdings disclosure on the fund's website, we estimated that each fund would incur 12 additional hours of internal staff time per year (one hour per monthly filing), at a time cost of $2,484, to update the website to include the new disclosure, for a total of 7,032 aggregate hours per year, at a total aggregate time cost of $1,455,624.

Certain commenters generally noted that complying with the new website disclosure requirements would add costs for funds, including costs to upgrade internal systems and software relevant to the website disclosure requirements (which possibly could include costs to engage third-party service providers for those money market fund managers that do not have existing relevant systems).[2282] One commenter, however, noted that the portfolio holdings disclosure

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2281 *See infra* section IV.C.

2282 *See, e.g.*, UBS Comment Letter ("The SEC also proposed additional information regarding the posting of: (i) the categories of a money fund's portfolio securities; (ii) maturity date information for each of the fund's portfolio securities; and (iii) market-based values of the fund's portfolio securities at the same time as this information becomes publicly available on Form N-MFP. We believe this information is too detailed to be useful to most investors and would be cost prohibitive to provide. Complying with these new website disclosure requirements would add notable costs for each money fund that UBS Global AM advises."); Chamber II Comment Letter ("With respect to the website disclosure requirements, internal systems and requirements should not cause a significant cost increase as long as the information is made available from relevant accounting systems,[2283] and another commenter stated that the proposed disclosure requirements generally should not produce any meaningful costs.[2284] Another commenter urged the Commission to harmonize new disclosure requirements so that funds would face lower administrative burdens, and investors would bear correspondingly fewer costs.[2285] As described above, the portfolio holdings disclosure requirements we are adopting have changed slightly from those that we proposed, in order to conform to modifications we are making to the proposed Form N-MFP disclosure requirements.[2286] The Commission estimates that the number of money market funds is currently 559 and that the hour burden per fund remains the same as previously estimated.[2287] Because the 2010 money market fund reforms already require money market funds to post monthly portfolio information on their websites,[2288] funds should not need to upgrade their systems and software, or develop relevant systems (either

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software would need to be upgraded or, for those MMF managers that do not have existing systems, third-party service providers would need to be engaged. The costs (which ultimately would be borne by investors through higher fees or lower yields) could potentially be significant to an MMF and higher than those estimated in the Proposal."); Dreyfus Comment Letter (noting that "several of the new Form reporting and web site and registration statement disclosure requirements . . . come with . . . material cost to funds and their sponsors"); *see also* Fin. Svcs. Roundtable Comment Letter (noting that the disclosure requirements would produce "significant cost to the fund and ultimately to the fund's investors"); SSGA Comment Letter (urging the Commission to consider the "substantial administrative, operational, and expense burdens" of the proposed disclosure-related amendments); Chapin Davis Comment Letter (noting that the disclosure- and reporting-related amendments will result in increased costs in the form of fund staff salaries, or consultant, accountant, and lawyer hourly rates, that will ultimately be borne in large part by investors and portfolio issuers).

2283 *See* State Street Comment Letter.

2284 *See* HSBC Comment Letter.

2285 *See* Fin. Svcs. Roundtable Comment Letter.

2286 *See supra* section III.E.9.h (Costs of harmonization of rule 2a-7 and Form N-MFP portfolio holdings disclosure requirements).

2287 The estimate regarding the number of money market funds is based on a review of reports on Form N-MFP filed with the Commission for the month ended on February 28, 2014.

2288 *See* 2010 Adopting Release, *supra* note 17, at section II.E.1.

in-house or with the assistance of a third-party service provider) to comply with the new portfolio holdings information disclosure requirements. The Commission therefore does not believe that comments about the costs required to upgrade relevant systems and software should affect its estimates of the burdens and costs associated with the portfolio holdings disclosure requirements. Taking this into consideration, the Commission has not modified its previous hour burden estimates. Although we have slightly revised the portfolio holdings disclosure requirements since proposing the requirements, we believe that these revisions do not produce additional burdens for funds and thus does not affect previous hour burden estimates.

Based on an estimate of 559 money market funds posting their portfolio holdings on their webpages, we estimate that, in the aggregate, the amendment will result in a total of 6,708 burden hours per year,[2289] at a total aggregate time cost of $1,522,716.[2290] We estimate that there are no external costs associated with this collection of information.

b. Disclosure of Daily Weekly Assets and Weekly Liquid Assets and Net Shareholder Flow

We are adopting, as proposed, the requirement for a money market fund to disclose on its website a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of each business day during the preceding six months. The burdens associated with this requirement include one-time burdens as well as ongoing burdens. In the Proposing Release, the Commission estimated that a money market fund would incur a one-time

2289 This estimate is based on the following calculation: 12 hours per year x 559 money market funds = 6,708 hours.

2290 This estimate is based on the following calculation: 6,708 hours x $227 per hour for a webmaster = $1,522,716.

burden of 70 hours, at a time cost of $20,150, to design the required schedule, chart, graph, or other depiction, and to make the necessary software programming changes to the fund's website to disclose the percentage of the fund's total assets that are invested in daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of each business day during the preceding six months. Using an estimate of 586 money market funds, the Commission estimated that money market funds would incur, in aggregate, a total one-time burden of 41,020 hours, at a time cost of $11,807,900, to comply with these website disclosure requirements. We estimated that each fund would incur an ongoing annual burden of 32 hours, at a time cost of $9,184, to update the depiction of daily and weekly liquid assets and the fund's net inflows or outflows on the fund's website each business day during that year. We further estimated that, in the aggregate, money market funds would incur an average ongoing annual burden of 18,752 hours, at a time cost of $5,381,824, to comply with this disclosure requirement.

As discussed above, certain commenters generally noted that complying with the new website disclosure requirements would add costs for funds, including costs to upgrade internal systems and software relevant to the website disclosure requirements (which possibly could include costs to engage third-party service providers for those money market fund managers that do not have existing relevant systems).[2291] One commenter noted that these costs could potentially be "significant to [a money market fund] and higher than those estimated in the Proposing Release."[2292] Another commenter suggested that obtaining the daily and weekly liquid

2291 *See* UBS Comment Letter ("We do not support these changes, because they would require a significant restructuring of the money funds' websites, which would be expensive to complete and maintain."); *see also supra* note 2282.

2292 *See* Chamber II Comment Letter.

asset data for purposes of complying with the disclosure requirements would result in additional costs that the Commission did not include in its estimate in the Proposing Release, namely, the costs associated with the enhanced controls required to disseminate this information publicly each day.[2293] However, one commenter stated that the proposed disclosure requirements should not produce any meaningful costs.[2294]

The Commission estimates that the number of money market funds is currently 559. We agree that the one-time costs for certain money market funds to upgrade internal systems and software, and/or develop such systems if a money market fund does not have existing relevant systems, could be higher than those average one-time costs estimated in the Proposing Release. However, because the estimated one-time costs were based on the mid-point of a range of estimated costs, the higher costs that may be incurred by certain industry participants have already been factored into our estimates.[2295] Our assumptions in estimating one-time hour and cost burdens therefore have not changed from those discussed in the Proposing Release. Based on an estimate of 559 money market funds posting information about their daily and weekly liquid assets, as well as their net inflows or outflows, on their webpages, we estimate that, in the aggregate, the amendment will result in a total one-time burden of 39,130 hours,[2296] at a time cost of $11,336,520,[2297] to comply with these website disclosure requirements. Amortized over a

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2293 *See* State Street Comment Letter at Appendix A ("Due to the inherent risks associated with public disclosure, there will be enhanced controls required with respect to the daily public dissemination of daily and weekly liquid assets and the risks of shareholders making redemption decisions in reliance on that information . . . adds to staff to calculate and review the daily and weekly liquid assets.").

2294 *See* HSBC Comment Letter.

2295 *See* Proposing Release, *supra* note 25, at n.1044.

2296 This estimate is based on the following calculation: 70 hours x 559 money market funds = 39,130 hours.

2297 This estimate is based on the following calculation: $20,280 per fund x 559 money market funds =

three-year period, this will result in an average annual burden of approximately 13,043 hours and time costs of approximately $3,778,840 for all money market funds.[2298]

The Commission agrees that money market funds may incur additional costs associated with the enhanced controls required to publicly disseminate daily and weekly liquid asset data, which costs were not estimated in the Proposing Release. Incorporating these additional costs into new estimates, we estimate that each fund will incur an ongoing annual burden of 36 hours,[2299] at a time cost of $10,274,[2300] to update the depiction of daily and weekly liquid assets and the fund's net inflows or outflows on the fund's website each business day during that year.

$11,336,520. The $20,280 per fund figure is, in turn, based on the following calculations: (20 hours (mid-point of 16 hours and 24 hours for project assessment) x $309 (blended hourly rate for a compliance manager ($283) and a compliance attorney ($334)) = $6,180) + (50 hours (mid-point of 40 hours and 60 hours for project development, implementation, and testing) x $282 (blended hourly rate for a senior systems analyst ($260) and a senior programmer ($303)) = $14,100) = $20,280 per fund. *See* Proposing Release, *supra* note 25, at nn.1044 and 1045.

2298 This estimate was based on the following calculations: 39,130 burden hours ÷ 3 = 13,043 average annual burden hours; $11,336,520 burden costs ÷ 3 = $3,778,840 average annual burden cost.

2299 The Commission estimates that the lower bound of the range of the ongoing annual hour burden to update the required website information will be 21 hours per year (5 minutes per day x 252 business days in a year = 1,260 minutes, or 21 hours). We estimate that the upper bound of the range of the ongoing annual hour burden to update the required website information will be 42 hours per year (10 minutes per day x 252 business days in a year = 2,520 minutes, or 42 hours).

Additionally, we estimate that each fund will incur an additional ongoing annual hour burden of between 3 hours and 6 hours associated with implementing enhanced controls required to publicly disseminate the data at issue. Specifically, depending on the controls the fund already has in place, the Commission estimates that it will take a compliance manager and an attorney between 3 and 6 hours to review and update (or if necessary, to develop and implement) the controls associated with the public dissemination of daily liquid asset and weekly liquid asset data each year.

Because we do not have the information necessary to provide a point estimate of the costs to modify a particular fund's systems we thus have provided ranges of estimated costs in our economic analysis. *See supra* section III.E.9.h. Likewise, for purposes of our estimates for the PRA analysis, we have taken the mid-point of the range discussed above (mid-point of 24 hours (21 hours + 3 hours) and 48 hours (42 hours + 6 hours) = 36 hours).

2300 This estimate is based on the following calculation: (31.5 hours (mid-point of 21 hours and 42 hours for updating the required website information) x $282 (blended rate for a senior systems analyst and senior programmer) = $8,883) + (4.5 hours (mid-point of 3 hours and 6 hours for implementing enhanced controls associated with public dissemination of data) x $309 (blended rate for a compliance manager and a compliance attorney) = $1,391) = $10,274 per fund.

Based on an estimate of 559 money market funds posting information about their daily and weekly liquid assets (as well as their net inflows or outflows) on their webpages, we estimate that the amendment will result in an average aggregate ongoing annual burden of 20,124 hours,[2301] at a time cost of $5,743,166,[2302] to comply with this disclosure requirement.

Adding the one-time burden, amortized over three years, to prepare and adopt procedures with the annual burden to prepare materials for determinations will result in a total amortized annual burden of 33,167 hours and time costs of $9,522,006 for all funds.[2303] We estimate that there are no external costs associated with this collection of information.[2304]

c. Disclosure of Daily Current NAV

We are adopting, as proposed, the requirement for a money market fund to disclose on its website a schedule, chart, graph, or other depiction showing the fund's current NAV per share as of the end of each business day during the preceding six months. The burdens associated with this requirement include one-time burdens as well as ongoing burdens. In the Proposing Release, the Commission estimated that a money market fund would incur a one-time burden of 70 hours, at a time cost of $20,150, to design the required schedule, chart, graph, or other depiction, and to make the necessary software programming changes to the fund's website to disclose the fund's

2301 This estimate is based on the following calculation: 36 hours x 559 money market funds = 20,124 hours.

2302 This estimate is based on the following calculation: $10,274 per fund x 559 money market funds = $5,743,166.

2303 This estimate is based on the following calculation: (39,130 burden hours ÷ 3 = 13,043 average annual burden hours) + 20,124 annual burden hours = 33,167 hours; ($11,336,520 burden costs ÷ 3 = $3,778,840 average annual burden cost) + $5,743,166 annual time costs = $9,522,006.

2304 While a money market fund could rely on third-party service providers to assist in developing systems relevant to the website disclosure requirements (*see supra* note 2282 and accompanying text; *infra* note 2305 and accompanying text), a fund also could rely on in-house capability to develop such systems. Our cost estimates assume that funds will use in-house resources to develop such systems except where it is more economical to use third-party service providers.

current NAV per share as of the end of each business day during the preceding six months. Using an estimate of 586 money market funds, we estimated that money market funds would incur, in aggregate, a total one-time burden of 41,020 hours, at a time cost of $11,807,900, to comply with these website disclosure requirements. We estimated that each fund would incur an ongoing annual burden of 32 hours, at a time cost of $9,184, to update the depiction of the fund's current NAV per share on the fund's website each business day during that year. We further estimated that, in the aggregate, money market funds would incur an average ongoing annual burden of 18,752 hours, at a time cost of $5,381,824, to comply with this disclosure requirement.

As discussed above, certain commenters generally noted that complying with the new website disclosure requirements would add costs for funds, including costs to upgrade internal systems and software relevant to the website disclosure requirements (which possibly could include costs to engage third-party service providers for those money market fund managers that do not have existing relevant systems).[2305] One commenter noted that these costs could potentially be "significant to [a money market fund] and higher than those estimated in the Proposal."[2306] However, another commenter stated that it agrees that those money market funds that presently publicize their current NAV per share daily on the fund's website will incur few additional costs to comply with the proposed disclosure requirements, and also that it agrees with the Commission's estimates for the ongoing costs of providing a depiction of the fund's current NAV each business day.[2307]

2305 *See supra* note 2282.

2306 *See* Chamber II Comment Letter.

2307 *See* State Street Comment Letter at Appendix A; *see also* HSBC Comment Letter (stating that the proposed disclosure requirements should not produce any "meaningful cost").

The Commission estimates that the number of money market funds is currently 559. We agree that the one-time costs for certain money market funds to upgrade internal systems and software, and/or develop such systems if a money market fund does not have existing relevant systems, could be higher than those average one-time costs estimated in the Proposing Release. However, because the estimated one-time costs were based on the mid-point of a range of estimated costs, the higher costs that may be incurred by certain industry participants have already been factored into our estimates.[2308] Our assumptions in estimating one-time hour and cost burdens therefore have not changed from those discussed in the Proposing Release. Based on an estimate of 559 money market funds posting information about their current NAV per share on their webpages, we estimate that, in the aggregate, the amendment will result in a total one-time burden of 39,130 hours,[2309] at a time cost of $11,336,520,[2310] to comply with these website disclosure requirements. As discussed above, we received no comments providing specific suggestions or critiques about our assumptions in estimating ongoing hour and cost burdens associated with the disclosure of a fund's current NAV per share, and therefore our methods of estimating these burdens also have not changed from those discussed in the Proposing Release. Based on an estimate of 559 money market funds posting information about their daily current NAV per share on their webpages, we estimate that, in the aggregate, the

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2308 *See* Proposing Release, *supra* note 25 at n.1044.

2309 This estimate is based on the following calculation: 70 hours x 559 money market funds = 39,130 hours.

2310 This estimate is based on the following calculation: $20,280 per fund x 559 money market funds = $11,336,520. The $20,280 per fund figure is, in turn, based on the following calculations: (20 hours (mid-point of 16 hours and 24 hours for project assessment) x $309 (blended hourly rate for a compliance manager ($283) and a compliance attorney ($334)) = $6,180) + (50 hours (mid-point of 40 hours and 60 hours for project development, implementation, and testing) x $282 (blended hourly rate for a senior systems analyst ($260) and senior programmer ($303)) = $14,100) = $20,280 per fund. *See* Proposing Release, *supra* note 25, at nn.1044 and 1045.

amendment will result in an average ongoing annual burden of 17,888 hours,[2311] at a time cost of $5,044,416,[2312] to comply with this disclosure requirement.

Amortizing these hourly and cost burdens over three years results in an average annual increased burden of 30,931 burden hours[2313] at a time cost of $8,823,256.[2314] We estimate that there are no external costs associated with this collection of information.[2315] Adding the one-time burden, amortized over three years, to prepare and adopt procedures with the annual burden to prepare materials for determinations will result in a total amortized annual burden of 30,931 hours and time costs of $8,823,256 for all funds.[2316]

d. Disclosure Regarding Financial Support Received by the Fund, the Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions

We are adopting, substantially as proposed, the requirement for a money market fund to disclose on its website certain information that the fund is required to report on Form N-CR regarding the provision of financial support to the fund, as well as the imposition and removal of

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2311 This estimate is based on the following calculation: 32 hours x 559 money market funds = 17,888 hours.

2312 This estimate is based on the following calculation: (32 hours x $282 (blended hourly rate for a senior systems analyst ($260) and a senior programmer ($303)) = $9,024) x 559 money market funds = $5,044,416.

2313 This estimate is based on the following calculation: [(39,130 initial burden hours + 17,888 annual burden hours (year 1)) + 17,888 burden hours (year 2) + 17,888 burden hours (year 3)] ÷ 3 = 30,931 hours.

2314 This estimate is based on the following calculation: [($11,336,520 initial monetized burden + $5,044,416 monetized burden (year 1)) + $5,044,416 monetized burden (year 2) + $5,044,416 monetized burden (year 3)] ÷ 3 = $8,823,256.

2315 While a money market fund could rely on third-party service providers to assist in developing systems relevant to the website disclosure requirements (*see supra* notes 2282 and 2305 and accompanying text), a fund also could rely on in-house capability to develop such systems. Our cost estimates assume that funds will use in-house resources to develop such systems except where it is more economical to use third-party service providers.

2316 This estimate is based on the following calculation: (39,130 burden hours ÷ 3 = 13,043 average annual burden hours) + 17,888 annual burden hours = 30,931 hours; ($11,336,520 burden costs ÷ 3 = $3,778,840 average annual burden cost) + $5,044,416 annual time costs = $8,823,256.

liquidity fees, and the suspension and resumption of fund redemptions.[2317] In the Proposing Release, the Commission estimated that the Commission would receive 40 reports per year filed in response to an event specified on Part C ("Provision of financial support to Fund") of Form N-CR. We further estimated that the Commission would receive 8 reports per year filed in response to events specified on Part E ("Imposition of liquidity fee"), Part F ("Suspension of Fund redemptions"), and Part G ("Removal of liquidity fee and/or resumption of Fund redemptions"). Using these numbers, we estimated that the requirement to disclose information about financial support received by a money market fund on the fund's website would result in a total aggregate burden of 40 hours per year, at a total aggregate time cost of $8,280. We further estimated that the requirement to disclose information about the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions, on the fund's website would result in a total aggregate burden of eight hours per year, at a total aggregate time cost of $1,656.

Although certain commenters generally noted, as discussed above, that complying with the new website disclosure requirements would add costs for funds,[2318] one commenter stated that the costs of disclosing liquidity fees and gates and instances of financial support on the fund's website would be minimal when compared to other costs,[2319] and another commenter stated that the proposed disclosure requirements should not produce any meaningful costs.[2320] As described

2317 As discussed in section III.E.9, the final amendments include certain changes to the website disclosure requirements from the proposal, largely designed to track the information on the website with the initial filings that will be provided on Form N-CR.

2318 *See supra* note 2282.

2319 *See* State Street Comment Letter.

2320 *See* HSBC Comment Letter.

above, we have modified the required time frame for disclosing information about financial support received by a fund on the fund's website, and have also modified the financial support disclosure requirement to require a fund to post only a subset of the information required to be filed in response to Part C of Form N-CR. However, this modification does not produce additional burdens for funds because it merely allows more time for the same disclosure and thus does not affect previous hour burden estimates. The Commission also has determined not to change the assumptions used in our estimates in response to the comments we received, as the comments provided no specific suggestions or critiques regarding our methods for estimating the hour burdens and costs associated with the Form N-CR-linked website disclosure requirements. We have, however, modified our estimates of the number of reports that will be filed each year on Part C, Part E, Part F, and Part G of Form N-CR, and these modified estimates have affected our estimates of the burdens associated with the related website disclosure requirements.[2321] Given these estimates, the requirement to disclose information about financial support received by a money market fund on the fund's website will result in a total aggregate burden of 30 hours per year, at a total aggregate time cost of $6,810.[2322] In addition, the requirement to disclose information about the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions, on the fund's website will result in a total aggregate burden of

2321 *See infra* section IV.D.2.

2322 This estimate is based on the following calculation: 30 hours per year (1 hour per website update x 30 total website updates per year) x $227 per hour for a webmaster = $6,810. Because all money market funds are required to have a website (*see* rule 2a-7(h)(10)), and because the disclosure at issue does not require any particular formatting or computational capacity, we assume that money market funds will not need to create a website or update their current systems capability to disclose the relevant information, and therefore we estimate that there are no one-time costs associated with this disclosure requirement.

3.6 hours per year, at a total aggregate time cost of $817.[2323] We estimate that there are no external costs associated with this collection of information.

e. Change in Burden

The aggregate additional annual burden associated with the website disclosure amendments discussed above is 70,840 hours[2324] at a time cost of $19,875,605.[2325] There is no change in the external cost burden associated with this collection of information.

7. *Total Burden for Rule 2a-7*

The currently approved burden for rule 2a-7 is 517,228 hours. The net aggregate additional burden hours associated with the amendments to rule 2a-7 increase the burden estimate to 632,244 hours annually for all funds.[2326]

B. Rule 22e-3

As outlined above, rule 22e-3 under the Investment Company Act exempts money market

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2323 This estimate is based on the following calculation: 3.6 hours per year (1 hour per website update x 3.6 total website updates per year) x $227 per hour for a webmaster = approximately $817. We estimate that there are no one-time costs associated with this disclosure requirement.

2324 This estimate is based on the following calculation: 6,708 hours (annual aggregate burden for the disclosure of portfolio holdings information) + 33,167 (average annual aggregate burden for the disclosure of daily liquid assets and weekly liquid assets and net shareholder flow) + 30,931 (average annual aggregate burden for the disclosure of daily current NAV) + 30 hours (annual aggregate burden for the disclosure of financial support provided to money market funds) + 3.6 hours (annual aggregate burden for the imposition and removal of liquidity fees, and suspension and resumption of fund redemptions) = 70,840 hours. This calculation reflects hourly burdens that have been amortized over three years, where appropriate.

2325 This estimate is based on the following calculation: $1,522,716 (annual aggregate costs associated with the disclosure of portfolio holdings information) + $9,522,006 (average annual aggregate costs associated with the disclosure of daily liquid assets and weekly liquid assets and net shareholder flow) + $8,823,256 (average annual aggregate costs associated with the disclosure of daily current NAV) + $6,810 (annual aggregate costs associated with the disclosure of financial support provided to money market funds) + $817 (annual aggregate costs associated with the imposition and removal of liquidity fees, and suspension and resumption of fund redemptions) = $19,875,605. This calculation reflects hourly burdens that have been amortized over three years, where appropriate.

2326 This estimate is based on the following calculation: 517,228 hours (currently approved burden) + 1,064 hours (ABS determination & recordkeeping) + 238 hours (retail funds) + 30 hours (government funds) + 581 hours (board determinations) - 35 hours (notice to the Commission) + 42,298 hours (stress testing) + 70,840 (website disclosure) = 632,244 hours.

funds from section 22(e) of the Act to permit them to suspend redemptions and postpone payment of redemption proceeds in order to facilitate an orderly liquidation of the fund, provided that certain conditions are met. The rule requires a money market fund to provide prior notification to the Commission of its decision to suspend redemptions and liquidate.[2327] This requirement is a collection of information under the PRA, and is designed to assist Commission staff in monitoring a money market fund's suspension of redemptions. The collection of information is mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a-7 and any conduit funds that rely on the rule,[2328] and to the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

To provide shareholders with protections comparable to those currently provided by the rule while also updating the rule to make it consistent with our amendments to rule 2a-7, we are amending rule 22e-3 to permit a money market fund to invoke the exemption in rule 22e-3 if the fund, at the end of a business day, has invested less than 10% of its total assets in weekly liquid assets.[2329] As under the current rule, a money market fund that maintains a stable NAV will continue to be able to invoke the exemption in rule 22e-3 if it has broken the buck or is about to "break the buck."[2330]

The amendments to rule 22e-3 are designed to permit a money market fund to suspend

2327 *See* rule 22e-3(a)(3).

2328 The rule permits funds that invest in a money market fund pursuant to section 12(d)(1)(E) of the Act ("conduit funds") to rely on the rule, and requires the conduit fund to notify the Commission of its reliance on the rule. *See* rule 22e-3(b).

2329 *See* rule 22e-3(a)(1).

2330 *See id.*; *see also supra* section III.A.4 (discussing amended rule 22e-3).

redemptions when the fund is under significant stress, as the funds may do today under rule 22e-3. We do not expect that money market funds will invoke the exemption provided by rule 22e-3 more frequently under our amendments than they do today. Although the amendments change the circumstances under which a money market fund may invoke the exemption provided by rule 22e-3, the amended rule still will permit a money market fund to invoke the exemption only when the fund is under significant stress, and we estimate that a money market fund is likely to experience that level of stress and choose to suspend redemptions in reliance on rule 22e-3 with the same frequency that funds today may do so. Therefore, as we indicated in the Proposing Release, we are not revising rule 22e-3's current approved annual aggregate collection of information.

The rule's current approved annual aggregate burden is approximately 30 minutes and is based on estimates that: (1) on average, one money market fund will break the buck and liquidate every six years;[2331] (2) there are an average of two conduit funds that may be invested in a money market fund that breaks the buck;[2332] and (3) each money market fund and conduit fund will spend approximately one hour of an in-house attorney's time to prepare and submit the notice required by the rule.[2333] As discussed in the Proposing Release, there will be no change in

2331 This estimate is based upon the Commission's experience with the frequency with which money market funds have historically required sponsor support. Although many money market fund sponsors have supported their money market funds in times of market distress, for purposes of this estimate the Commission conservatively estimates that one or more sponsors may not provide support.

2332 These estimates are based on a staff review of filings with the Commission. Generally, rule 22e-3 permits conduit funds to suspend redemptions in reliance on rule 22e-3 and requires that they notify the Commission if they elect to do so.

2333 This estimate is based on the following calculations: (1 hour ÷ 6 years) = 10 minutes per year for each fund and conduit fund that is required to provide notice under the rule; 10 minutes per year x 3 (combined number of affected funds and conduit funds) = 30 minutes. The estimated cost associated with the estimated burden hours ($189) is based on the following calculations: $378/hour (hourly rate for an in-house attorney based on the Securities Industry and Financial Markets Association, Management &

the external cost burden associated with this collection of information. We did not receive any comments on the estimated hour and cost burdens related to amended rule 22e-3.

C. Rule 30b1-7 and Form N-MFP

Rule 30b1-7 under the Investment Company Act currently requires money market funds to file electronically a monthly report on Form N-MFP within five business days after the end of each month. The information required by the form must be data-tagged in XML format and filed through EDGAR. The rule is designed to improve transparency of information about money market funds' portfolio holdings and facilitate Commission oversight of money market funds. Preparing a report on Form N-MFP is a collection of information under the PRA.[2334] This collection of information will be mandatory for money market funds that rely on rule 2a-7 and the information will not be kept confidential.

1. Discussion of Final Amendments

We are adopting a number of amendments to Form N-MFP which will include new and amended collections of information. As discussed in more detail in section III.G. above, we have revised the final amendments from our proposal in a number of ways in order to reduce costs to the extent feasible and still achieve our goals of enhancing and improving the monitoring of money market fund risks. While the final form amendments differ in some respects from what we proposed, we are adopting many of the other proposed amendments unchanged.[2335]

Professional Earnings in the Securities Industry 2011, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.) x 30 minutes = $189.

2334 For purposes of the PRA analysis, the current burden associated with the requirements of rule 30b1-7 is included in the collection of information requirements of Form N-MFP.

2335 We provide a more detailed discussion of our final amendments and commenters' comments in section III.G above.

These amendments include:

Amendments Related to Rule 2a-7 Reforms. As discussed in more detail in section III.G. above, we proposed a number of changes to Form N-MFP designed to conform it with the general reforms of rule 2a-7. We are adopting them largely as proposed, with some revisions to reflect the revised approach we are taking to the primary reforms.[2336]

New Reporting Requirements. We are also adopting several new items to Form N-MFP that we believe will improve the Commission's (and investors') ability to monitor money market funds. As discussed in more detail in section III.G. above, these final amendments include some, but not all, of the new reporting requirements that we had proposed. For example, as proposed, the final amendments include additional reporting on fair value categorization and LEI information (if available).[2337] We are also adopting, with some changes from the proposal, revisions to several other items, including revised investment categories for portfolio securities and repurchase agreement collateral. However, we are not adopting the lot level portfolio security disclosure, top 20 shareholder information, and security identifier level reporting on repo collateral that we had proposed.

Clarifying and Other Amendments. We are adopting, as proposed, several amendments to clarify current instructions and items of Form N-MFP.[2338] We are also making certain other, non-substantive, structural changes to Form N-MFP.[2339]

2336 *See supra* section III.G.

2337 *Id.*

2338 *See supra* section III.G for a more detailed discussion of these clarifications.

2339 As proposed, the amendments will renumber the items of Form N-MFP to separate the items into four separate sections to allow the Commission to reference, add, or delete items in the future without having to re-number all subsequent items in the form. *See supra* section III.G for a more detailed discussion of this restructuring.

2. *Current Burden*

The current approved collection of information for Form N-MFP is 45,214 annual aggregate hours and $4,424,480 in external costs.

3. *Change in Burden*

The Commission estimates that 559 money market funds are required to file reports on Form N-MFP on a monthly basis.[2340] No commenters provided specific data or estimates regarding the cost estimates we provided in the Proposing Release for the amendments to Form N-MFP, although some suggested that the costs of some aspects of our proposed amendments to Form N-MFP could be significant.[2341] For example, some commenters expressed concern that the proposed lot level portfolio security disclosure would significantly increase the costs and burdens of preparing Form N-MFP.[2342] After consideration of these comments, we believe that our original cost estimates may have understated the costs if we had implemented the amendments as proposed. As noted above, we have revised the final amendments from our proposal in a number of ways in order to reduce costs to the extent feasible and still achieve our goals of enhancing and improving the monitoring of money market fund risks. In light of these changes, and taking into account other commenters' estimates,[2343] we believe our original cost

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2340 This estimate is based on a review of reports on Form N-MFP filed with the Commission for the month ended February 28, 2014.

2341 *See, e.g.*, Fidelity Comment Letter; State Street Comment Letter.

2342 *See supra* note 1477 and accompanying text.

2343 *See, e.g.*, State Street Comment Letter, (estimating that "the additional disclosures that will be required will at a minimum double the cost of preparing and filing the Form N-MFP. If purchases and sales information is also required, it may increase even more."); Dreyfus Comment Letter (estimating that it "incurred several hundreds of thousands of dollars in technology-related costs to build systems required to populate the Form N-MFP for (at the time) 51 MMFs," and that the reprogramming for each round of changes to Form N-MFP "will require several months of time at tens of thousands of dollars in cost for each."). As discussed in more detail below, given that we are not adopting certain costlier disclosures such as lot level reporting, the Commission estimates that the current approved collection of information for Form N-MFP of 45,214 estimates continue to be reasonable. Accordingly, the Commission has not modified the estimated annual burden hours associated with the final amendments from those we estimated at the proposal. However, the Commission has modified its estimates based on updated industry data on time costs as well as the updated total number of money market funds that will be affected.[2344]

The Commission understands that approximately 35% of the 559[2345] (for a total of 196[2346]) money market funds that report information on Form N-MFP license a software solution from a third party that is used to assist the funds to prepare and file the required information. The Commission also understands that approximately 65% of the 559[2347] (for a total of 363) money market funds that report information on Form N-MFP retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N-MFP on behalf of the fund. The Commission estimates that, in the first year, each fund (regardless of whether the fund licenses the software or uses a third-party service provider, given our assumption that these two options are cost-competitive with one another) will incur an

aggregate annual hours will almost double to 83,412 aggregate annual hours, while external costs will rise from $4,424,480 to $4,780,736. *See supra* section IV.C.2 and *infra* note 2363 and accompanying discussion.

2344 The updated industry data on time costs reflects salary information from SIFMA's Management & Professional Earnings in the Securities Industry 2013, *supra* note 2214.

2345 We are estimating that 559 money market funds will be affected by our final amendments to Form N-MFP. This estimate is based on a review of reports on Form N-MFP filed with the Commission for the month ended February 28, 2014. In the Proposing Release we estimated 586 funds would be affected by our proposed amendments. *See* Proposing Release *supra* note 25 at n.688.

2346 The Commission estimated this 35% in the current burden. This estimate is based on the following calculation: 559 funds x 35% = 196 funds.

2347 The Commission estimated this 65% in the current burden. This estimate is based on the following calculation: 559 funds x 65% = 363 funds.

additional average annual burden of 85 hours, at a time cost of $22,069 per fund,[2348] to prepare and file the report on Form N-MFP (as amended) and an average of approximately 60 additional burden hours (five hours per fund, per filing), at a time cost of $15,569 per fund[2349] each year thereafter.[2350]

In the Proposing Release, we also discussed that software service providers (whether provided by a licensor or third-party service provider) would be likely to incur additional external costs to modify their software and might pass those costs down to money market funds in the form of higher annual licensing fees.[2351] In the Proposing Release, although we did not have the information necessary to provide a point estimate of the external costs or the extent to which the software service providers would pass down any external costs to funds, we were able

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2348 This estimate is based on the following calculations: [30 hours for the initial monthly filing at a total cost of $7,824 per fund (8 hours x $232 blended average hourly rate for a financial reporting manager ($266 per hour) and fund senior accountant ($198 per hour) = $1,856 per fund) + (4 hours x $157 per hour for an intermediate accountant = $628 per fund) + (6 hours x $312 per hour for a senior database administrator = $1872 per fund) + (4 hours x $301 for a senior portfolio manager = $1204 per fund) + (8 hours x $283 per hour for a compliance manager = $2,264 per fund)] + [55 hours (5 hours per fund x 11 monthly filings) at a total cost of $14,245 per fund ($259 average cost per fund per burden hour x 55 hours)]. The additional average annual burden per fund for the first year is 85 hours (30 hours (initial monthly filing) + 55 hours (remaining 11 monthly filings)) and the additional average cost burden per fund for the first year is $22,069 ($7,824 (initial monthly filing) + $14,245 (remaining 11 monthly filings = $22,069).

2349 This estimate is based on the following calculations: (16 hours x $232 blended average hourly rate for a financial reporting manager ($266 per hour) and fund senior accountant ($198 per hour) = $3,712 per fund) + (9 hours x $157 per hour for an intermediate accountant = $1,413 per fund) + (13 hours x $312 per hour for a senior database administrator = $4,056 per fund) + (9 hours x $301 for a senior portfolio manager = $2,709 per fund) + (13 hours x $283 per hour for a compliance manager = $3,679 per fund) = 60 hours (16 + 9 + 13 + 9 + 13) at a total cost of $15,569 per fund ($3,712 + $1,413 + $4,056 + $2,709 + $3,679). Therefore, the additional average cost per fund per burden hour is approximately $259 ($15,569 ÷ 60 burden hours).

2350 In the Proposing Release, we estimated each fund would incur an additional average annual burden of 85 hours (30 hours for the initial monthly filing and 55 hours for the remaining monthly filings (5 hours per fund, per filing x 11 months)), at a time cost of $22,045 per fund, to prepare and file the report on Form N-MFP (as proposed) and an average of approximately 60 additional burden hours (five hours per fund, per filing), at a time cost of $15,562 per fund each year thereafter. *See* Proposing Release, *supra* note 25, at nn.1092 and 1093 and accompanying text.

2351 *See* Proposing Release, *supra* note 25, at n.1094 and accompanying text.

to estimate a range of costs, from 5% to 10% of current annual licensing fees.[2352] We received no specific comments on this estimate. While we are making certain changes to the final amendments as described above that may reduce costs, we do not believe that these changes would significantly alter our estimated range of additional external licensing costs.[2353] Accordingly, as proposed, the Commission estimates that 35% of funds (196 funds) will pay $336 in additional external licensing costs each year and 65% of funds (363 funds) will pay $800 in additional external licensing costs each year because of our final amendments to Form N-MFP.[2354]

The Commission therefore estimates that our final amendments to Form N-MFP will result in a first-year aggregate additional 47,515 burden hours[2355] at a total time cost of $12,336,571[2356] plus $356,256 in total external costs[2357] for all funds, and 33,540 burden hours[2358] at a total time cost of $8,703,071[2359] plus $356,256 in total external costs[2360] for all funds each

2352 *Id.*

2353 Similar to our previous estimates of time costs, we believe our original estimates of external costs continue to be reasonable in light of certain changes in the final amendments and consideration of commenters' comments. *See supra* note 2343 and accompanying discussion.

2354 As proposed, the Commission estimates that the annual licensing fee for 35% of money market funds is $3,360: a 5% to 10% increase = $168 - $336 in increased costs; the Commission estimates that the annual licensing fee for 65% of money market funds is $8,000: a 5% to 10% increase = $400 - $800 in increased costs. *See also,* Proposing Release, *supra* note 25, at n.1094 and accompanying text.

2355 This estimate is based on the following calculation: 559 funds x 85 hours = 47,515 burden hours in year one.

2356 This estimate is based on the following calculation: 559 funds x $22,069 annual cost per fund in the initial year = $12,336,571.

2357 This estimate is based on the following calculation: (196 funds x $336 additional external costs = $65,856) + (363 funds x $800 additional external costs = $290,400) = $356,256.

2358 This estimate is based on the following calculation: 559 funds x 60 hours per fund = 33,540 hours.

2359 This estimate is based on the following calculation: 559 funds x $15,569 annual cost per fund in subsequent years = $8,703,071.

2360 *See supra* note 2357.

year hereafter. Amortizing these additional hourly burdens over three years results in an average annual aggregate burden of approximately 38,198 hours at a total time cost of $9,914,238, and $356,256 in total external costs for all funds.[2361] Finally, the Commission estimates that our final amendments to Form N-MFP will result in a total aggregate annual collection of information burden of 83,412 hours[2362] and $4,780,736 in external costs.[2363]

D. Rule 30b1-8 and Form N-CR

1. Discussion of New Reporting Requirements

Today we are adopting a new requirement that money market funds file a current report with us when certain significant events occur.[2364] Generally, a money market fund will be required to file Form N-CR if a portfolio security defaults, an affiliate provides financial support to the fund, the fund experiences a significant decline in its shadow price, or when liquidity fees or redemption gates are imposed and when they are lifted.[2365] In most cases, a money market

2361 This estimate is based on the following calculation: (47,515 hours in year 1 + 33,540 hours in year 2 + 33,540 hours in year 3) ÷ 3 = 38,198 average annual burden hours; ($12,336,571 in year 1 + $8,703,071 in year 2 + $8,703,071 in year 3) ÷ 3 = $9,914,238 average annual burden costs; ($356,256 in year 1 + $356,256 in year 2 + $356,256 in year 3) ÷ 3 = $356,256 average external costs.

2362 This estimate is based on the following calculation: current approved burden of 45,214 hours + 38,198 in additional burden hours as a result of our amendments = 83,412 hours.

2363 This estimate is based on the following calculation: current approved burden of $4,424,480 in external costs + $356,256 in additional external costs as a result of our amendments = $4,780,736.

2364 As we proposed, this requirement will be implemented through our adoption of new rule 30b1-8, which requires funds to file a report on new Form N-CR in certain circumstances. *See* rule 30b1-8; Form N-CR. For purposes of the PRA analysis, therefore, the burden associated with the requirements of rule 30b1-8 is included in the collection of information requirements of Form N-CR.

2365 *See* Form N-CR Parts B-H. More specifically, these events include instances of portfolio security default (Form N-CR Part B), financial support (Form N-CR Part C), a decline in a stable NAV fund's current NAV per share (Form N-CR Part D), a decline in weekly liquid assets below 10% of total fund assets (Form N-CR Part E), whether a fund has imposed or removed a liquidity fee or gate (Form N-CR Parts E, F and G), or any such other event(s) a Fund, in its discretion, may wish to disclose (Form N-CR Part H). In addition, Form N-CR Part A will also require a fund to report the following general information: (i) the date of the report; (ii) the registrant's central index key ("CIK") number; (iii) the EDGAR series identifier; (iv) the Securities Act file number; and (v) the name, email address, and telephone number of the person authorized to receive information and respond to questions about the filing. *See* Form N-CR Part A. While the fund will be required to submit a brief summary filing on Form N-CR within one business day of the occurrence of the event, and a follow up filing within four business days that includes a more complete description and information.[2366] This requirement is a collection of information under the PRA. The information provided on Form N-CR will enable the Commission to enhance its oversight of money market funds and its ability to respond to market events. The Commission will be able to use the information provided on Form N-CR in its regulatory, disclosure review, inspection, and policymaking roles. Requiring funds to report these events on Form N-CR will provide important transparency to fund shareholders, and also will provide information more uniformly and efficiently to the Commission. It will also provide investors and other market observers with better and timelier disclosure of potentially important events. This collection of information will be mandatory for money market funds that rely on rule 2a-7 and the information will not be kept confidential.

2. *Estimated Burden*

a. Overview of Cost and Burden Changes

Our cost estimates below generally reflect the costs associated with an actual filing of Form N-CR.[2367] The Proposing Release estimated that a fund would annually spend on average approximately five burden hours and total time costs of $1,708 to prepare, review and submit a report under any Part of Form N-CR.[2368] In the aggregate, the Proposing Release estimated that

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Commission estimates the burden of reporting the information in response to Part A to be minimal, they were considered in the estimates of the burdens incurred generally in connection with the preparation, formatting and filing of a report under any of the other Parts of Form N-CR.

2366 A report on Form N-CR will be made public on EDGAR immediately upon filing.

2367 We also recognize the possibility for some advance industry discussions and preparation in connection with Form N-CR, as discussed in more detail in the text following *supra* note 1363.

2368 *See* Proposing Release *supra* note 25 at n.1203 and accompanying text.

compliance with new rule 30b1-8 and Form N-CR would result in a total annual burden of approximately 341 burden hours and total annual time costs of approximately $116,429.[2369] The Proposing Release estimated 586 money market funds would be required to comply with new rule 30b1-8 and Form N-CR,[2370] which would have resulted in an average annual burden of approximately 0.58 burden hours and average annual time costs of approximately $199 on a per-fund basis. The Proposing Release further estimated that there would be no external costs associated with this collection of information.[2371]

As discussed in section III.F above, we are making various changes from the proposal to our final amendments, a number of which we expect to impact the frequency of filings as well as the costs associated with filing a report on Form N-CR.[2372] For example, with respect to Parts B, C and D, we are now permitting filers to split their response into an initial and follow-up filing,[2373] similar to what we proposed for Parts E and F in the Proposing Release. We believe this change will increase total filing costs by increasing the number of filings. In addition, although only one commenter provided specific cost estimates,[2374] we also took into account commenters' general concerns and suggestions about the timing and burdens of Form N-CR.[2375] For example, commenters cited the particular burdens and the role of the board in drafting and

2369 *See* Proposing Release *supra* note 25 at n.1205 and accompanying text.

2370 *See* Proposing Release *supra* note 25 at n.1206 and accompanying text.

2371 *See* Proposing Release *supra* note 25 at discussion following n.1206.

2372 *See supra* sections III.F.2-5 for a more detailed discussion of each of our final amendments.

2373 *See supra* section III.F.7 (Timing of Form N-CR).

2374 *See supra* note 1295 and accompanying text. As discussed in that section, because today we are allowing funds to file a response to the Items discussed by the commenter within four business days instead of just one business day, we expect that the costs of filing Form N-CR should be significantly reduced from this commenter's estimates. *Id.*

2375 See, *e.g.*, supra sections III.F.7 (Timing of Form N-CR) and III.F.8 (Operational Costs: Overview).

reviewing the board disclosures in Parts E and F.[2376] In light of commenters' input, we therefore revisited (and typically increased) our prior cost estimates. Recognizing the substantive differences between each Part of Form N-CR, we are also breaking out our cost estimates for each Part individually, rather than providing just one estimate with respect to any Part as in the proposal.[2377] We further expect, in particular with respect to the follow-up reports under Parts B through F as well as any reports on Part H, that certain funds may engage legal counsel to assist with the drafting and review of Form N-CR, thereby incurring additional external costs.[2378] Accordingly, we have added an estimate for new Part H and, in the discussion below, we are also updating and providing a more nuanced estimate of the costs associated with filing a report with respect to each of Parts B though G of Form N-CR.

b. Part B: Default Events

As proposed,[2379] we estimate that the Commission would receive, in the aggregate, an average of 20 sets[2380] of initial and follow-up reports[2381] per year in response to Part B. Taking

2376 *See, e.g.*, IDC Comment Letter ("Any public disclosure about a board's decision-making process would require careful and thoughtful drafting and multiple layers of review (by board counsel, fund counsel, and the directors, among others)."); Stradley Ronon Comment Letter; SIFMA Comment Letter.

2377 *See supra* note 2368 and accompanying text.

2378 *See supra* note 1347 and accompanying discussion.

2379 *See* Proposing Release *supra* note 25 at n.1107 and accompanying text.

2380 This estimate is based on the Commission's current estimate of an average of 20 notifications of an event of default or insolvency sent via email to the Director of IM pursuant to rule 2a-7(c)(7)(iii) each year. *See Submission for OMB Review, Comment Request, Extension: Rule 2a-7, OMB Control No. 3235-0268*, Securities and Exchange Commission 77 Fed. Reg. 236 (Dec. 7, 2012). We believe that this estimate is likely to be high, in particular when markets are not in crisis as they were during 2008 or 2011. However, we are continuing to use this higher estimate to be conservative in our analysis.

2381 A fund must file a report on Form N-CR responding to Items B.1 through B.4 on the first business day after the initial date on which a default or event of insolvency contemplated in Item B occurs. A fund must amend its initial report on Form N-CR to respond to Item B.5 by the fourth business day after the initial date on which a default or event of insolvency contemplated in Item B occurs. *See* Form N-CR Item B Instructions.

into account a blend of legal and financial in-house professionals,[2382] we estimate that a fund would on average spend a total of 13.5 burden hours[2383] and time costs of $4,830[2384] for one set of initial and follow-up reports in response to Part B. Because some funds may also engage outside legal counsel,[2385] we estimate funds will also incur on average external costs of approximately $1,000 for one set of reports.[2386] The Commission therefore estimates that the total annual

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2382 Recognizing that, depending on the particular circumstances, different members of a fund's financial team may assist with the preparation of Form N-CR in varying degrees, we have estimated the time costs for a financial professional to be $255 per hour, which is the blended average hourly rate for a senior portfolio manager ($301), financial reporting manager ($266), and senior accountant ($198). For similar reasons, we have estimated the time costs for a legal professional to be $440 per hour, which is the blended average hourly rate for a deputy general counsel ($546) and compliance attorney ($334). In the Proposing Release, we based our estimate of time costs on an in-house attorney and in-house accountant only. *See* Proposing Release *supra* note 25 at n.1111 and accompanying text. As noted in this section, we are making these and other changes to provide a more nuanced estimate of the costs associated with filing a report on Part B of Form N-CR.

2383 When filing a report, the Commission estimates that a fund would spend on average approximately 3 hours of legal professional time and 3 hours of financial professional time to prepare, review and submit an initial filing. In addition, the Commission estimates that a fund would spend on average approximately 4.5 hours of legal professional time and 3 hours of financial professional time to prepare, review and submit a follow-up amendment. The estimates of the average legal professional time above have already been reduced by the corresponding average amount of time that we estimate will be shifted in the aggregate from in-house counsel to outside counsel. *See infra* note 2386.

2384 This estimate is based on the following calculations: ((3 hours for the initial filing + 4.5 hours for the follow-up filing) x $440 per hour for a legal professional = $3,300) + ((3 hours for the initial filing + 3 hours for the follow-up filing) x $255 per hour for a financial professional = $1,530) = 13.5 burden hours and time costs of $4,830.

2385 We estimate the cost for outside legal counsel to be $400 per hour. This is based on an estimated $400 per hour cost for outside legal services, and is the same estimate used by the Commission for these services in the "Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million Under Management, and Foreign Private Advisers" final rule: SEC Release No. IA-3222 (June 22, 2011); [76 FR 39646 (July 6, 2011)].

2386 Commenters provided us with no specific comments that would allow us to estimate with any precision to what extent funds may engage legal counsel to assist in the preparation of Form N-CR. However, for purposes of this PRA, we estimate that in approximately half of all instances funds will engage legal counsel to assist in the preparation of a set of initial and follow up filings responding to Part B of Form N-CR. In such cases, we estimate that approximately half of the total legal professional time that in-house counsel would have otherwise spent on responding to Part B of Form N-CR will be shifted to outside counsel. Accordingly, a quarter of the total legal professional time that would otherwise have been spent on responding to Part B of Form N-CR, or 2.5 hours, will be shifted from in-house counsel to outside counsel (½ of all instances x ½ legal professional time = ¼ aggregate legal professional time). Accordingly, we estimate that funds will incur additional external legal costs of $1,000 (2.5 hours x $400 per hour for outside counsel) per set of initial and follow-up reports in response to Part B.

burden for Part B reporting would be 270 burden hours, time costs of $96,600, and external costs of $20,000.[2387]

c. Part C: Financial Support

In a change from the proposal, we have made modifications to the definition of financial support in Part C of Form N-CR,[2388] which we estimate will impact the frequency of filings on Part C of Form N-CR. Accordingly, updating our estimate from the proposal,[2389] we estimate that the Commission will receive, in the aggregate, an average of 30 sets[2390] of initial and follow-up reports[2391] per year in response to Part C. Taking into account a blend of legal and financial

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2387 This estimate is based on the following calculation: 20 reports per year x 13.5 burden hours per report = 270 burden hours; 20 reports per year x $4,830 time cost per report = $96,600 in time costs; 20 reports per year x $1,000 external cost per report = $20,000 in external costs.

2388 *See supra* section III.F.3 (Definition of Financial Support).

2389 *See* Proposing Release *supra* note 25 at n.1108 and accompanying text (estimating an average of 40 reports per year filed in response to an event specified on Part C).

2390 This estimate is based on our current estimate of an average of 25 notifications of certain rule 17a-9 security purchases that money market funds currently send via email to the Director of IM pursuant to rule 2a-7(c)(7)(iii) each year. *See Submission for OMB Review, Comment Request, Extension: Rule 2a-7, OMB Control No. 3235-0268*, Securities and Exchange Commission 77 Fed. Reg. 236 (Dec. 7, 2012). Because money market funds will be required to file a report in response to Part C of Form N-CR if the fund receives any form of financial support from the fund's sponsor or other affiliated person (which support includes, but is not limited to, a rule 17a-9 security purchase), the Commission estimates that the Commission will receive a greater number of reports on Form N-CR Part C than the number of notifications of rule 17a-9 security purchases that it currently receives. In the Proposing Release, we originally estimated 40 filings per year under Part C of Form N-CR. *See* Proposing Release *supra* note 25 at n.735 and accompanying text. As discussed in *supra* section III.F.3, today we are adopting certain exclusions from the definition of financial support that will narrow the definition to a certain degree. Correspondingly, in anticipation of a moderate reduction in instances that meet the definition as amended today, we predict an estimated 30 filings per year under Part C of Form N-CR. We believe that this estimate is likely to be high, in particular when markets are not in crisis as they were during 2008 or 2011. However, we are using this higher estimate to be conservative in our analysis.

2391 A fund must file a report on Form N-CR responding to Items C.1 through C.7 on the first business day after the initial date on which any financial support contemplated in Item C is provided to the fund. A fund must amend its initial report on Form N-CR to respond to Items C.8 through C.10 by the fourth business day after the initial date on which any financial support contemplated in Item C is provided to the fund. *See* Form N-CR Item C Instructions.

in-house professionals,[2392] we estimate that a fund will on average spend a total of 18.5 burden hours[2393] and time costs of approximately \$6,660[2394] for one set of initial and follow-up reports in response to Part C. We also estimate funds will also incur on average external costs of approximately \$1,400 for one set of reports.[2395] The Commission therefore estimates that the total annual burden for Part C reporting will be 555 burden hours, time costs of \$199,800, and external costs of \$42,000.[2396]

d. Part D: Shadow Price Declines

In a change from the proposal, we estimate that the Commission will receive, in the aggregate, an average of 0.3 sets[2397] of initial and follow-up reports[2398] per year in response to Part

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2392 *See supra* note 2382.

2393 When filing a report, the Commission estimates that a fund will spend on average approximately 4.5 hours of legal professional time and 4 hours of financial professional time to prepare, review and submit an initial filing. In addition, the Commission estimates that a fund will spend on average approximately 6 hours of legal professional time and 4 hours of financial professional time to prepare, review and submit a follow-up amendment. The estimates of the average legal professional time above have already been reduced by the corresponding average amount of time that we estimate will be shifted in the aggregate from in-house counsel to outside counsel. *See infra* note 2395.

2394 This estimate is based on the following calculations: ((4.5 hours for the initial filing + 6 hours for the follow-up filing) x \$440 per hour for a legal professional = \$4,620) + ((4 hours for the initial filing + 4 hours for the follow-up filing) x \$255 per hour for a financial professional = \$2,040) = 18.5 burden hours and time costs of \$6,660.

2395 Using the same assumptions as with respect to Part B in *supra* note 2386, we estimate that approximately a quarter of the total legal professional time that would otherwise have been spent on responding to Part C of Form N-CR, or 3.5 hours, will be shifted from in-house counsel to outside counsel. Accordingly, we estimate that funds will incur additional external legal costs of \$1,400 (3.5 hours x \$400 per hour for outside counsel) per set of initial and follow-up reports in response to Part C.

2396 This estimate is based on the following calculation: 30 reports per year x 18.5 burden hours per report = 555 burden hours; 30 reports per year x \$6,660 time cost per report = \$199,800 in time costs; 30 reports per year x \$1,400 external cost per report = \$42,000 in external costs.

2397 Commission staff analyzed form N-MFP data from November 2010 to February 2014 and found that only one non-institutional fund had a ¼ of 1 percent deviation from the stable \$1.00 per share NAV. 1 fund in over 39 months is equivalent to less than 1 (1 x 12 ÷ 39 = 0.31) funds per year. *See also supra* note 1394. In the Proposing Release, we had estimated 0.167 reports filed per year in respect of Part D. *See* Proposing Release, *supra* note 25, at n.1205. We revised this estimate to reflect more accurate accounting and updated data.

2398 A retail or government money market fund must file a report on Form N-CR responding to Items D.1 and

D. Taking into account a blend of legal and financial in-house professionals,[2399] we estimate that a fund will on average spend a total of 13.5 burden hours[2400] and time costs of approximately $4,830[2401] for one set of initial and follow-up reports in response to Part D. We also estimate funds will also incur on average external costs of approximately $1,000 for one set of reports.[2402] The Commission therefore estimates that the total annual burden for Part D reporting will be four burden hours, time costs of $1,449, and external costs of $300.[2403]

e. Part E: Imposition of Liquidity Fees

In addition to other changes from the proposal,[2404] we have made modifications to the

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D.2 on the first business day after the initial date on which the fund's current NAV deviates downward from its intended stable price per share by more than ¼ of 1 percent. A fund must amend its initial report on Form N-CR to respond to Item D.3 by the fourth business day after the initial date on which the fund's current NAV deviates downward from its intended stable price per share by more than ¼ of 1 percent. *See* Form N-CR Item D Instructions.

2399 *See supra* note 2382.

2400 When filing a report, the Commission estimates that a fund will spend on average approximately 3 hours of legal professional time and 3 hours of financial professional time to prepare, review and submit an initial filing. In addition, the Commission estimates that a fund will spend on average approximately 4.5 hours of legal professional time and 3 hours of financial professional time to prepare, review and submit a follow-up amendment. The estimates of the average legal professional time above have already been reduced by the corresponding average amount of time that we estimate will be shifted in the aggregate from in-house counsel to outside counsel. *See infra* note 2402.

2401 This estimate is based on the following calculations: ((3 hours for the initial filing + 4.5 hours for the follow-up filing) x $440 per hour for a legal professional = $3,300) + ((3 hours for the initial filing + 3 hours for the follow-up filing) x $255 per hour for a financial professional = $1,530) = 13.5 burden hours and time costs of $4,830.

2402 Using the same assumptions as with respect to Part B in *supra* note 2386, we estimate that approximately a quarter of the total legal professional time that would otherwise have been spent on responding to Part D of Form N-CR, or 2 hours, will be shifted from in-house counsel to outside counsel. Accordingly, we estimate that funds will incur additional external legal costs of $1,000 (2.5 hours x $400 per hour for outside counsel) per set of initial and follow-up reports in response to Part D.

2403 This estimate is based on the following calculation: 0.3 reports per year x 13.5 burden hours per report = 4 burden hours; 0.3 reports per year x $4,830 time cost per report = $1,449 in time costs; 0.3 reports per year x $1,000 external cost per report = $300 in external costs.

2404 *See supra* section III.F.5 for a discussion of all our final amendments to Part E. For example, we have made modifications to the board disclosure requirements. *See supra* section III.F.5 (Board Disclosures). In addition, as noted in *supra* note 2376, commenters cited the particular burdens and the role of the board in drafting and reviewing the board disclosures in Parts E and F. Accordingly, taking into account these and weekly liquid asset thresholds permitting or triggering board consideration of a liquidity fee in Part E of Form N-CR,[2405] We therefore have updated our estimates of the frequency of filings under Part E.[2406] Moreover, in particular with respect to the board disclosures, we expect that most if not all funds may engage outside legal counsel to assist with the drafting and review of Form N-CR, thereby incurring additional external costs.[2407] Accordingly, we estimate that the Commission will receive, in the aggregate, an average of 1.2 sets[2408] of initial and follow-up reports[2409] per year in response to an event specified on Part E. Taking into account a blend of legal and financial in-house professionals,[2410] as well as time spent by the board reviewing the

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our other changes to Part E, we have increased our cost estimates for Part E.

2405 *See supra* section III.F.5 (Conforming Changes).

2406 *See infra* note 2408 and accompanying text.

2407 *See supra* note 1377 and accompanying discussion.

2408 For purposes of this estimate, the Commission estimates that 0.6 funds per year will file a report triggered by the 10% weekly liquid asset threshold. *See supra* section III.F.5 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates). In the Proposing Release, we had previously estimated a total of 4 reports in response to Parts E and F based on the previously proposed higher 15% weekly liquid asset trigger. *See* Proposing Release *supra* note 25 at n.1202. In addition, the DERA Study analyzed the distribution of weekly liquid assets and found that 83 prime funds per year had their weekly liquid asset percentages fall below 30%. *See supra* section III.F.5 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates). We are unable to estimate with any specificity how many of these 83 prime funds would have decided to impose a discretionary liquidity fee upon breaching the 30% weekly liquid asset threshold. However, we generally expect relatively few funds will impose a discretionary liquidity fee given its voluntary nature and potential costs on redeeming shareholders. For purposes of this PRA, we estimate that funds will voluntarily impose a liquidity fee at most as often as they will be required to consider a liquidity fee based on the 10% weekly liquid asset trigger. Accordingly, the Commission conservatively estimates that 0.6 additional funds per year will file a report in response to Part E because it breached the 30% weekly liquid asset threshold and their board determined to impose such a discretionary liquidity fee. Together with the filings triggered by the 10% weekly liquid asset threshold, this will result in a total of 1.2 sets of filings in response to Part E per year. Although we believe this estimate is likely to be high, we are using this estimate to be conservative in our analysis. *See supra* section III.F.5 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates).

2409 A fund must file a report on Form N-CR responding to Items E.1 through E.4 on the first business day after the initial date on which the reporting requirement under Part E was triggered. A fund must amend its initial report on Form N-CR to respond to Items E.5 and E.6 by the fourth business day after the initial date on which the reporting requirement under Part E was triggered. *See* Form N-CR Item E Instructions.

2410 *See supra* note 2382.

disclosure,[2411] we estimate that a fund will on average spend a total of 20 burden hours[2412] and time costs of approximately $10,910[2413] for one set of initial and follow-up reports in response to Part E. Because we expect that most, if not all, funds may also engage outside legal counsel to assist with the drafting and review of Part E,[2414] we also estimate funds will also incur on average external costs of approximately $3,600 per set of reports.[2415] The Commission therefore estimates that the total annual burden for Part E reporting will be 24 burden hours, time costs of $13,092, and external costs of $4,320.[2416]

f. Part F: Suspension of Fund Redemptions

In addition to other changes from the proposal,[2417] we have increased the weekly liquid

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2411 For purposes of this PRA, we estimate time costs of $4,400 per hour for a board of 8 directors. *See supra* note 2214.

2412 When filing a report, the Commission estimates that a fund would spend on average approximately 3 hours of legal professional time and 4 hours of financial professional time to prepare, review and submit an initial filing. In addition, the Commission estimates that a fund would spend on average approximately 6 hours of legal professional time and 6 hours of financial professional time to prepare, review and submit a follow-up amendment. The Commission also estimates that a fund would spend 1 hour for a board of directors to review the reports. The estimates of the average legal professional time above have already been reduced by the corresponding average amount of time that we estimate will be shifted in the aggregate from in-house counsel to outside counsel. *See infra* note 2415.

2413 This estimate is based on the following calculations: ((3 hours for the initial filing + 6 hours for the follow-up filing) x $440 per hour for a legal professional = $3,960) + ((4 hours for the initial filing + 6 hours for the follow-up filing) x $255 per hour for a financial professional = $2,550) + (1 hour x $4,400 per hour for a board of 8 directors = $4,400) = 20 burden hours and time costs of $10,910.

2414 Because, for the reason discussed in *supra* note 1301 and accompanying text, the potential imposition of a liquidity fee is one of the most significant events that can occur to money market funds, to be conservative we estimate that all funds would seek outside counsel for purposes of this estimate.

2415 On average, we estimate that approximately half of the total legal professional time that in-house counsel would have otherwise spent on reviewing and responding to Part E of Form N-CR will be shifted to outside counsel. Accordingly, for purposes of this PRA, we estimate that a total of 9 hours will be shifted from in-house counsel to outside counsel. Accordingly, we estimate that funds would incur external legal costs of $3,600 (9 hours x $400 per hour for outside counsel) per set of initial and follow-up reports in response to Part E.

2416 This estimate is based on the following calculation: 1.2 reports per year x 20 burden hours per report = 24 burden hours; 1.2 reports per year x $10,910 time cost per report = $13,092 in time costs; 1.2 reports per year x $3,600 external cost per report = $4,320 in external costs.

2417 *See supra* section III.F.5 for a discussion of all our final amendments to Part F. For example, we have asset threshold permitting boards to impose a discretionary gate.[2418] We therefore have updated our estimates of the frequency of filings under Part F.[2419] In particular with respect to the board disclosures, we expect that most if not all funds may engage legal counsel to assist with the drafting and review of Form N-CR, thereby incurring additional external costs.[2420] Accordingly, we estimate that the Commission will receive, in the aggregate, an average of 0.6 sets[2421] of initial and follow-up reports[2422] per year in response to an event specified on Part F. Taking into account a blend of legal and financial in-house professionals,[2423] as well as time spent by the board reviewing the disclosure, we estimate that a fund will on average spend a total of 20

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made modifications to the board disclosure requirements. *See supra* section III.F.5 (Board Disclosures). In addition, as noted in *supra* note 2376, commenters cited the particular burdens and the role of the board in drafting and reviewing the board disclosures in Parts E and F. Accordingly, taking into account these and our other changes to Part F, we have increased our cost estimates for Part F.

2418 *See supra* section III.F.5 (Conforming Changes).

2419 *See infra* note 2421 and accompanying text.

2420 *See supra* note 1376 and accompanying discussion.

2421 In the Proposing Release, we had previously estimated a total of 4 reports in response to Parts E and F based on the previously proposed 15% weekly liquid asset trigger. *See* Proposing Release *supra* note 25 at n.1202. However, we are revising this estimate in light of the amended higher 30% weekly liquid asset threshold for discretionary gates. In particular, the DERA Study found that 83 prime funds per year had their weekly liquid asset percentages fall below 30%. *See supra* section III.F.8 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates). Similar to discretionary liquidity fees, we are unable to estimate with any specificity how many of these 83 prime funds would have decided to impose a discretionary gate upon breaching the 30% weekly liquid asset threshold. *Cf. supra* note 2408. However, we conservatively estimate the number of instances in which a fund breached the 30% weekly liquid asset threshold and its board determined to impose a voluntary gate to be equal to the number of instances in which a fund breached the 30% weekly liquid asset threshold and its board determined to impose a voluntary fee. This results in an estimate of approximately 0.6 sets of initial and follow-up reports filed per year in response to Part F. Although we believe this estimate is likely to be high, we are using this estimate to be conservative in our analysis. *See supra* section III.F.8 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates).

2422 A fund must file a report on Form N-CR responding to Items F.1 and F.2 on the first business day after the initial date on which a fund suspends redemptions. A fund must amend its initial report on Form N-CR to respond to Items F.3 and F.4 by the fourth business day after the initial date on which a fund suspends redemptions. *See* Form N-CR Item F Instructions.

2423 *See supra* note 2382.

burden hours[2424] and time costs of approximately $10,910[2425] for one set of initial and follow-up reports in response to Part F. Because we expect most if not all funds may also engage legal counsel to assist with the drafting and review of Form N-CR,[2426] we estimate funds also further incur on average external costs of approximately $3,600 for each set of reports.[2427] The Commission therefore estimates that the total annual burden for Part F reporting will be 12 burden hours, time costs of $6,546, and external costs of $2,160.[2428]

g. Part G: Removal of Liquidity Fees and/or Resumption of Fund Redemptions

As discussed in the Proposing Release, we continue to believe the frequency of filings under Part G on Form N-CR to be closely correlated to the frequency of filings under Parts E and

2424 When filing a report, the Commission estimates that a fund would spend on average approximately 3 hours of legal professional time and 4 hours of financial professional time to prepare, review and submit an initial filing. In addition, the Commission estimates that a fund would spend on average approximately 6 hours of legal professional time and 6 hours of financial professional time to prepare, review and submit a follow-up amendment. The Commission also estimates that a fund would spend 1 hour for a board of directors to review the reports. The estimates of the average legal professional time above have already been reduced by the corresponding average amount of time that we estimate will be shifted in the aggregate from in-house counsel to outside counsel. *See infra* note 2427.

2425 This estimate is based on the following calculations: ((3 hours for the initial filing + 6 hours for the follow-up filing) x $440 per hour for a legal professional = $3,960) + ((4 hours for the initial filing + 6 hours for the follow-up filing) x $255 per hour for a financial professional = $2,550) + (1 hour x $4,400 per hour for a board of 8 directors = $4,400) = 20 burden hours and time costs of $10,910.

2426 Because, for the reason discussed in *supra* note 1301 and accompanying text, the potential imposition of a gate is one of the most significant events that can occur to money market funds, to be conservative we estimate that all funds would seek outside counsel for purposes of this estimate.

2427 On average, we estimate that approximately half of the total legal professional time that in-house counsel would have otherwise spent on reviewing and responding to Part F of Form N-CR will be shifted to outside counsel. Accordingly, for purposes of this PRA, we estimate that a total of 8 hours will be shifted from in-house counsel to outside counsel. Accordingly, we estimate that funds will incur external legal costs of $3,600 (9 hours x $400 per hour for outside counsel) per set of initial and follow-up reports in response to Part F.

2428 This estimate is based on the following calculation: 0.6 reports per year x 20 burden hours per report = 12 burden hours; 0.6 reports per year x $10,910 time cost per report = $6,546 in time costs; 0.6 reports per year x $3,600 external cost per report = $2,160 in external costs.

F.[2429] Given our revised estimates of the number of filings under Parts E and F,[2430] we are correspondingly updating our estimate of the number of filings under Part G. We are further updating our estimates for Part G, because the Commission expects the cost per filing associated with responding to Part G to be lower than for Parts E or F.[2431] Unlike Parts B through F and H, for which we have included estimated external costs to account for the possibility that funds may engage legal counsel to assist in the preparation and review of Form N-CR,[2432] we have not done so here because of the relative simplicity of Part G. Accordingly, we estimate that the Commission will receive, in the aggregate, an average of 1.8 reports[2433] per year in response to Part G. Taking into account a blend of legal and financial in-house professionals,[2434] we estimate that a fund will on average spend a total of two burden hours[2435] and time costs of approximately

2429 *See, e.g.,* Proposing Release *supra* note 25 at n.1202 and accompanying discussion. We expect there to be a close correlation because Part G requires disclosure of the lifting of any liquidity fee or gate imposed in connection with Part E or F.

2430 *See supra* notes 2408 and 2421.

2431 The Proposing Release estimated that a fund would spend on average approximately 5 burden hours and total time costs of $1,708 to prepare, review, and submit a report under any Part of Form N-CR. *See* Proposing Release *supra* note 25 at n.1203 and accompanying text. However, we expect a response to Part G to be shorter than under Parts E or F, given that Part G only requires disclosure of the date on which a fund removed a liquidity fee and/or resumed Fund redemptions. *See* Form N-CR Item G.1. In addition, unlike Part E or F, Part G would not require any follow-up report.

2432 *See supra* IV.D.2.g for our discussion of the external costs of Parts B through F; *see also infra* this section for our discussion of the external costs of Part H.

2433 As discussed in section III.F, we expect the frequency of Part G filings will be closely correlated to any filings under Part E of F, given that Part G will disclose the lifting of any liquidity fee or gate imposed in connection with Part E or F. *See supra* section III.F.8 (Operational Costs of Part E, F, and G: Imposition and Lifting of Fees and Gates). In particular, for purposes of this estimate the Commission estimates that 1.8 funds per year will file a report in response to Part G, based on the assumption that each time a fund files a report under Parts E or F it will also eventually file a report under Part G. We believe this to be a high estimate given that, among other things, at least some funds that impose a liquidity fee or gate will likely to go out of business (and thus would never reopen), although we are unable to predict with certainty how many would do so.

2434 *See supra* note 2382.

2435 When filing a report, the Commission estimates that a fund will spend on average approximately 1 hour of legal professional time and 1 hour of financial professional time to prepare, review, and submit a filing in

$695[2436] for a filing in response to Part G. The Commission therefore estimates that the total annual burden for Part G reporting will be 3.6 burden hours, and time costs of $1,251.[2437]

h. Part H: Other Events

Given the broad scope and voluntary nature of the optional disclosure under Part H of Form N-CR, which is new from the proposal, we believe that, in an event of filing, a fund's particular circumstances that led it to decide to make such a voluntary disclosure will be the predominant factor in determining the time and costs associated with filing a report on Part H. To be conservative, we also expect that some funds may engage outside legal counsel to assist with the drafting and review of Part H, thereby incurring additional external costs.[2438] We estimate that the Commission will receive, in the aggregate, approximately 15 reports[2439] per year in response to Part H of Form N-CR. Taking into account a blend of legal and financial in-house professionals,[2440] we estimate that a fund will on average spend a total of four burden hours[2441]

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response to Part G.

2436 This estimate is based on the following calculations: (1 hour x $440 per hour for a legal professional = $440) + (1 hour x $255 per hour for a financial professional = $255) = 2 burden hours and time costs of $695.

2437 This estimate is based on the following calculation: 1.8 reports per year x 2 burden hours per report = 3.6 burden hours; 1.8 reports per year x $695 time cost per report = $1,251 in time costs.

2438 *See supra* note 2386 and accompanying discussion.

2439 For purposes of this estimate, the Commission conservatively estimates that funds will include a disclosure under Part H in about a quarter of the instances they submit a follow-up filing under Parts B through F, as well as with respect to a quarter of all filings under Part G. Because of the timing constraints, we generally would not expect that funds will make a Part H disclosure in an initial filing. However, given the possibility that funds might make a Part H disclosure in the initial filing or on a stand-alone basis, we conservatively estimate one additional Part H filing per year under each scenario. We therefore estimate an annual total of approximately 15 filings in response to Part H based on the following calculation: (20 sets of Part B filings per year) + (30 sets of Part C filings per year) + (0.3 sets of Part D filings per year) + (1.2 sets of Part E filings per year) + (0.6 sets of Part F filings per year) + (1.8 Part G filings per year) = approximately 54 Parts B-G filings per year. (54 Parts B-G filings per year ÷ 4) + (2 additional Part H filings per year in an initial filing or on a stand-alone basis) = approximately 15 Part H filings per year.

2440 *See supra* note 2382.

and time costs of approximately $1,390[2442] for one set of initial and follow-up reports in response to Part H. We also estimate funds will also incur on average external legal costs of approximately $800 per report.[2443] The Commission therefore estimates that the total annual burden for Part H reporting will be 60 burden hours, time costs of $20,850, and external costs of $12,000.[2444]

i. Aggregate Burden of Form N-CR

In the aggregate, we estimate that compliance with Form N-CR will result in a total annual burden of approximately 929 burden hours,[2445] total annual time costs of approximately $339,588,[2446] and total external costs of $80,780.[2447] Given an estimated 559 money market funds

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2441 This estimate is derived in part from our current PRA estimate for Form 8-K under the Exchange Act. *See* "Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934" (OMB Control No. 3235-0060), *available at* http://www.reginfo.gov. In particular, we estimate that Form 8-K takes approximately 5 hours per response if rounded up to the next whole hour. As an initial step, we conservatively added an additional hour, for a total of 6 hours. Of this total, we estimate that an average of 2 hours will be shifted to outside legal counsel (corresponding to the 2 hours of legal professional time discussed immediately below). Accordingly, when filing a report, the Commission estimates that a fund would spend on average approximately 2 hours of legal professional time and 2 hours of financial professional time to prepare, review and submit a response to Part H.

2442 This estimate is based on the following calculations: (2 hours x $440 per hour for a legal professional = $880) + (2 hours x $255 per hour for a financial professional = $510) = 4 burden hours and time costs of $1,390.

2443 In particular, we expect that funds are more likely to file a report on Part H when there are more complex events that need to be addressed, which correspondingly we believe will make it significantly more likely that funds will engage legal counsel. To be conservative, we estimate that funds would engage outside legal counsel in all cases they file a response to Part H. Accordingly, we estimate that funds would incur additional external legal costs of $800 (2 hours x $400 per hour for outside counsel) per set of initial and follow-up reports in response to Part H (with the estimated 2 hours of outside counsel time corresponding to the 2 hours of legal professional time we estimate in *supra* note 2441).

2444 This estimate is based on the following calculation: 15 reports per year x 4 burden hours per report = 60 burden hours; 15 reports per year x $1,390 time cost per report = $20,850 in time costs; 15 reports per year x $800 external cost per report = $12,000 in external costs.

2445 This estimate is based on the following calculation: 270 hours (Part B) + 555 hours (Part C) + 4 hours (Part D) + 24 hours (Part E) + 12 hours (Part F) + 3.6 hours (Part G) + 60 hours (Part H) = 929 aggregate burden hours.

2446 This estimate is based on the following calculation: $96,600 (Part B) + $199,800 (Part C) + $1,449 (Part D) + $13,092 (Part E) + $6,546 (Part F) + $1,251 (Part G) + $20,850 (Part H) = $339,588 aggregate time that will be required to comply with Form N-CR,[2448] this will result in an average annual burden of approximately 1.7 burden hours, average annual time costs of approximately $607 on a per-fund basis, and average annual external costs of $145.[2449]

E. Rule 34b-1(a)

Rule 34b-1 under the Investment Company Act is an antifraud provision governing sales material that accompanies or follows the delivery of a statutory prospectus. Among other things, rule 34b-1 deems to be materially misleading any advertising material by a money market fund required to be filed with the Commission by section 24(b) of the Act that includes performance data, unless such advertising also includes the rule 482(b)(4) risk disclosures already discussed in section IV.F below. In the Proposing Release, the Commission noted that the proposal to amend the wording of the rule 482(b)(4) risk disclosures would indirectly affect rule 34b-1(a), although the Commission proposed no changes to rule 34b-1(a) itself. We also noted that our discussion of the amendments to rule 482(b)(4) accounted for the burdens associated with the wording changes to the risk disclosures in money market fund advertising, and by complying with our amendments to rule 482(b)(4), money market funds would also automatically remain in compliance with rule 34b-1(a) as affected by these amendments. Therefore, any burdens associated with rule 34b-1(a) as a result of our proposed amendments to rule 482(b)(4) were already accounted for in the Proposing Release's Paperwork Reduction Act analysis of rule 482.

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costs.

2447 This estimate is based on the following calculation: $20,000 (Part B) + $42,000 (Part C) + $300 (Part D) + $4,320 (Part E) + $2,160 (Part F) + $12,000 (Part H) = $80,780 total external costs.

2448 *See supra* note 2340.

2449 This estimate is based on the following calculation: 929 burden hours ÷ 559 funds = 1.7 annual burden hours per fund; $339,588 ÷ 559 funds = $607 annual time costs per fund; $80,780 ÷ 559 funds = $145 annual external costs per fund.

No commenters addressed rule 34b-1, and we continue to believe that any burdens associated with rule 34b-1(a) as a result of the amendments we are adopting to rule 482(b)(4) are accounted for in section IV.F below.

F. Rule 482

We are adopting amendments affecting current requirements under rule 482 of the Securities Act relating to the information that is required to be included in money market funds' advertisements or other sales materials. Specifically, the amendments revise the particular wording of the current rule 482(b)(4) risk disclosures required to appear in advertisements for money market funds (including on the fund website). The fees and gates amendments, as well as the floating NAV amendments, will change the investment expectations and experience of money market fund investors. Accordingly, the amended wording of the rule 482(b)(4) risk disclosures reflects the particular risks associated with the imposition of liquidity fees or gates and/or a floating NAV. In the Proposing Release, using an estimate of 586 money market funds, the Commission estimated that money market funds would incur, in aggregate, a total one-time burden of 3,077 hours, at a time cost of $857,904, to comply with the amended requirements of rule 482. This collection of information will be mandatory for money market funds that rely on rule 2a-7, and the information will not be kept confidential.

Certain commenters generally noted that complying with all of the new disclosure requirements, including the amended requirements of rule 482, would involve additional costs.[2450] Several commenters provided dollar estimates of the initial costs to implement a fees

2450 *See, e.g.*, Fin. Svcs. Roundtable Comment Letter (noting that the proposed disclosure requirements generally would produce "significant cost to the fund and ultimately to the fund's investors"); SSGA Comment Letter (urging the Commission to consider the "substantial administrative, operational, and

and gates or floating NAV framework and noted that these estimates would include the costs of related disclosure, but these commenters did not specifically break out the disclosure-related costs in their estimates.[2451] One commenter stated that the costs to update website disclosures to reflect the new floating NAV and fees and gates requirements would be "minimal when compared to other costs,"[2452] and another commenter stated that the proposed disclosure requirements should not produce any meaningful costs.[2453] As described above, we are adopting amendments to rule 482 that have been modified from the proposed amendments to respond to certain commenters' concerns and other suggestions. The rule 482 disclosure requirements that we are adopting therefore differ from the proposed rule 482 disclosure requirements in content and format.[2454] We believe that these revisions to the proposed requirements do not produce additional burdens for funds because the revisions only involve changes in the wording and formatting of the required disclosure statement and do not impact the measures funds must take to effect the disclosure requirements. Taking this into consideration, as well as the fact that we received no comments providing specific suggestions or critiques about our methods for estimating the burdens and costs associated with the rule 482 amendments, the Commission has not modified its previous hour burden estimates.[2455]

expense burdens" of the proposed disclosure-related amendments); Chapin Davis Comment Letter (noting that the disclosure- and reporting-related amendments will result in increased costs in the form of fund staff salaries, or consultant, accountant, and lawyer hourly rates, that will ultimately be borne in large part by investors and portfolio issuers).

2451 *See, e.g.*, Chamber I Comment Letter; Fidelity Comment Letter.

2452 *See* State Street Comment Letter, at Appendix A.

2453 *See* HSBC Comment Letter.

2454 *See supra* section III.E.1.

2455 The compliance period for updating rule 482(b)(4) risk disclosures to reflect the floating NAV or liquidity fees and gates amendments is 2 years. We understand that money market funds commonly update and

Based on an estimate of 559 money market funds that will be required to update the risk disclosure included in fund advertisements pursuant to rule 482, as amended, we estimate that, in the aggregate, the amendments will result in 2,935 total one-time burden hours,[2456] at a total one-time time cost of $818,376.[2457] Amortized over a three-year period, this will result in an average additional annual burden of approximately 978 burden hours[2458] at a total annual time cost of approximately $272,792 for all funds.[2459] Given that the amendments are one-time updates to the wording of the risk disclosures already required under current rule 482(b)(4), we believe that, once funds have made these one-time changes, the amendments to rule 482(b)(4) will only require money market funds to incur the same costs and hour burdens on an ongoing basis as under current rule 482(b)(4).

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issue new advertising materials on a periodic and frequent basis. Accordingly, given the extended compliance period proposed, we expect that funds should be able to amend the wording of their rule 482(b)(4) risk disclosures as part of one of their general updates of their advertising materials. Similarly, we believe that funds could update the corresponding disclosure statement on their websites when performing other periodic website maintenance. We therefore account only for the incremental change in burden that amending the rule 482(b)(4) risk disclosures will cause in the context of a larger update to a fund's advertising materials or website.

2456 This estimate is based on the following calculation: 5.25 hours per year (4 hours to update and review the wording of the rule 482(b)(4) risk disclosure for each fund's printed advertising and sales material, plus 1.25 hours to post and review the wording of the rule 482(b)(4) risk disclosures on a fund's website) x 559 money market funds = approximately 2,935 hours.

2457 This estimate is based on the following calculation: $1,464 (total one-time costs per fund) x 559 funds = $818,376. The $1,464 per fund figure is, in turn, based on the following calculations: (3 hours (spent by a marketing manager to update the wording of the risk disclosures for each fund's marketing materials) x $254/hour for a marketing manager = $762) + (1 hour (spent by a webmaster to update a fund's website risk disclosures) x $227/hour for a webmaster = $227) + (1.25 hours (spent by an attorney to review the amended rule 482(b)(4) risk disclosures) x $380/hour for an attorney = $475) = $1,464.

2458 This estimate is based on the following calculation: 2,935 hours ÷ 3 = approximately 978 hours. The current approved collection of information for Rule 482 is 305,705 hours annually for all investment companies. Adding 978 hours to this approved collection of information will result in a burden of 306,683 hours each year.

2459 This estimate is based on the following calculation: $818,376 ÷ 3 = $272,792.

G. Form N-1A

We are adopting amendments to Form N-1A relating to money market funds' disclosure of: (i) certain of the risks associated with liquidity fees and gates and/or a floating NAV; (ii) historical occasions on which the fund has considered or imposed liquidity fees or gates; and (iii) historical instances in which the fund has received financial support from a sponsor or fund affiliate. Specifically, we are adopting amendments to Form N-1A that will require funds to include certain risk disclosure statements in their prospectuses. We are also adopting amendments to Form N-1A that will require money market funds (other than government money market funds that have not chosen to retain the ability to impose liquidity fees and suspend redemptions) to provide disclosure in their SAIs regarding any occasion during the last 10 years in which: (i) the fund's weekly liquid assets have fallen below 10%, and with respect to each occasion, whether the fund's board has determined to impose a liquidity fee and/or suspend redemptions; and (ii) the fund's weekly liquid assets have fallen below 30%, and the fund's board has determined to impose a liquidity fee and/or suspend redemptions.[2460] Finally, we are also adopting amendments to Form N-1A that will require each money market fund to disclose in its SAI historical instances in which the fund has received financial support from a sponsor or fund affiliate.[2461]

In addition, the fee and gate requirements we are adopting will entail certain additional prospectus and SAI disclosure requirements that will not necessitate rule and form amendments. Specifically, pursuant to current disclosure requirements, we will expect that money market

2460 *See supra* section III.E.5.

2461 *See supra* section III.E.7.

funds (besides government money market funds that have not chosen to retain the ability to impose liquidity fees and suspend redemptions) will disclose in the statutory prospectus, as well as in the SAI, as applicable, the effects that the potential imposition of fees and/or gates may have on a shareholder's ability to redeem shares of the fund.[2462] We also expect that, promptly after a money market fund imposes a redemption fee or gate, it will inform investors of any fees or gates currently in place by means of a post-effective amendment or prospectus supplement.[2463]

The floating NAV amendments we are adopting will also require certain additional prospectus and SAI disclosures, which will not necessitate rule and form amendments. Pursuant to current disclosure requirements, we expect that floating NAV money market funds will include disclosure in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling the shares of the floating NAV fund.[2464] In addition, we expect that a floating NAV money market fund will update its prospectus and SAI disclosure regarding the purchase, redemption, and pricing of fund shares, to reflect any procedural changes resulting from the fund's use of a floating NAV.[2465] We also expect that, at the time a stable NAV money market fund transitions to a floating NAV, it will update its registration statement to include relevant related disclosure by means of a post-effective amendment or prospectus supplement.[2466] This collection of information will be mandatory for money market funds that rely on rule 2a-7, and the information will not be kept confidential.

2462 *See supra* section III.E.4.

2463 *See supra* section III.E.9.f.

2464 *See supra* section III.E.2.

2465 *See supra* section III.E.3.

2466 *See id.*

In the Proposing Release, the Commission estimated that the proposed amendments to Form N-1A relating to the fees and gates proposal, the Form N-1A requirements relating to the fees and gates proposal that would not necessitate form amendments, and the proposed sponsor support disclosure requirements together would result in all money market funds incurring an annual increased burden of 1,007 hours, at a time cost of $298,072. We also estimated that, under the fees and gates alternative, there would be one-time aggregate external costs (in the form of printing costs) of $6,269,175 associated with the new Form N-1A disclosure requirements. The Commission estimated that the proposed amendments to Form N-1A relating to the floating NAV proposal, the Form N-1A requirements relating to the floating NAV proposal that would not necessitate form amendments, and the proposed sponsor support disclosure requirements together would result in all money market funds incurring an annual increased burden of 907 hours, at a time cost of $268,472. Additionally, we estimated that, under the floating NAV alternative, there would be one-time aggregate external costs (in the form of printing costs) of $3,134,588 associated with the new Form N-1A disclosure requirements.

Certain commenters generally noted that complying with all of the new disclosure requirements, including the Form N-1A disclosure requirements, would involve some additional costs.[2467] Several commenters provided dollar estimates of the initial costs to implement a fees and gates or floating NAV regime and noted that these estimates would include the costs of related disclosure, but these commenters did not specifically break out the disclosure-related

[2467] *See supra* note 2450.

costs in their estimates.[2468] One commenter stated that the costs to update a fund's registration statement to reflect the new fees and gates and floating NAV requirements would be "minimal when compared to other costs,"[2469] and another commenter stated that the proposed disclosure requirements should not produce any meaningful costs.[2470] As described above, we are adopting amendments to the Form N-1A disclosure requirements that have been modified from the proposed amendments to respond to commenters concerns. The amendments we are adopting to the Form N-1A risk disclosure requirements therefore differ from the proposed requirements in content and format.[2471] In addition, the amendments we are adopting to require funds to provide disclosure in their SAIs about historical occasions on which the fund has considered or imposed liquidity fees or gates, as well as historical occasions on which the fund has received financial support from a sponsor or fund affiliate, have been modified in certain respects from the proposed amendments. We believe that these revisions do not produce additional burdens for funds[2472] and therefore do not affect the assumptions we used in estimating hour burdens and related costs. The comments we received on the new disclosure requirements also do not affect

2468 *See, e.g.*, Chamber I Comment Letter; Fidelity Comment Letter.

2469 *See* State Street Comment Letter, at Appendix A.

2470 *See* HSBC Comment Letter.

2471 *See supra* section III.E.1.

2472 The revisions to the proposed Form N-1A risk disclosure requirements do not produce additional burdens for funds because the revisions only involve changes in the wording and formatting of the required disclosure statement and do not impact the measures funds must take to effect the disclosure requirements. The revisions to the proposed SAI historical disclosure requirements do not produce additional burdens for funds because the adopted amendments to Form N-1A require a fund to disclose less detailed information than that which would have been required under the proposed amendments to Form N-1A. *See supra* text following note 975 and text accompanying and following note 1019. Furthermore, because the SAI historical disclosure overlaps with the information that a fund must disclose on Parts C, E, F, and G of Form N-CR (*see supra* section III.E.8), we believe that the burden for a fund to draft and finalize this historical disclosure will largely be incurred when the fund files Form N-CR, and thus the differences in the Form N-1A historical disclosure requirements that we are adopting, compared to those that we proposed, should not substantially affect our previous hour burden estimates.

the assumptions we used in our estimates, as these comments provided no specific suggestions or critiques regarding our methods for estimating hour and cost burdens associated with the Form N-1A requirements. As described below, however, our current estimates reflect the fact that the amendments we are adopting today combine the floating NAV and fees and gates proposal alternatives into one unified approach.

The burdens associated with the proposed amendments to Form N-1A include one-time burdens as well as ongoing burdens. The Commission estimates that each money market fund (except government funds that have not chosen to retain the ability to impose liquidity fees and suspend redemptions, and floating NAV money market funds) will incur a one-time burden of five hours,[2473] at a time cost of $1,595,[2474] to draft and finalize the required disclosure and amend its registration statement. In addition, we estimate that each government fund that has not chosen to retain the ability to impose liquidity fees and suspend redemptions will incur a one-time burden of two hours,[2475] at a time cost of $638,[2476] to draft and finalize the required

2473 This estimate is based on the following calculation: 1 hour to update the registration statement to include the required disclosure statement + 3 hours to update the registration statement to include the disclosure about effects that fees/gates may have on shareholder redemptions, and the disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates + 1 hour to update the registration statement to include the disclosure about historical occasions of financial support received by the fund = 5 hours.

2474 This estimate is based on the following calculation: (1 hour (to update registration statement to include required disclosure statement) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $319) + (3 hours (to update registration statement to include disclosure about effects that fees/gates may have on shareholder redemptions, and disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $957) + (1 hour (to update registration statement to include disclosure about historical occasions of financial support received by the fund) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $319) = $1,595.

2475 This estimate is based on the following calculation: 1 hour to update registration statement to include required disclosure statement + 1 hour to update registration statement to include disclosure about financial support received by the fund = 2 hours.

2476 This estimate is based on the following calculation: (1 hour (to update registration statement to include required disclosure statement) x $319 (blended hourly rate for a compliance attorney ($334) and a senior disclosure and amend its registration statement. We also estimate that each floating NAV money market fund will incur a one-time burden of eight hours,[2477] at a time cost of $2,552,[2478] to draft and finalize the required disclosure and amend its registration statement. In aggregate, the Commission estimates that all money market funds will incur a one-time burden of 2,933 hours,[2479] at a time cost of $935,627,[2480] to comply with the Form N-1A disclosure requirements. Amortizing the one-time burden over a three-year period results in an average annual burden of 978 hours at a time cost of $311,876.[2481]

The Commission estimates that each money market fund (except government funds that

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programmer ($303)) = $319) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $319) = $638.

2477 This estimate is based on the following calculation: 1 hour to update registration statement to include required disclosure statement + 3 hours to update registration statement to include disclosure about effects that fees/gates may have on shareholder redemptions, and disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates + 3 hours to update registration statement to include tax- and operations-related disclosure about floating NAV + 1 hour to update registration statement to include disclosure about financial support received by the fund = 8 hours.

2478 This estimate is based on the following calculation: (1 hour (to update registration statement to include required disclosure statement) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $319) + (3 hours (to update registration statement to include disclosure about effects that fees/gates may have on shareholder redemptions, and disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $957) + (3 hours (to update registration statement to include tax- and operations-related disclosure about floating NAV) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $957) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $319) = $2,552.

2479 This estimate is based on the following calculations: (5 hours x 195 funds (559 money market funds – 205 institutional prime funds – 159 funds that will rely on the government fund exemption) = 975 hours) + (2 hours x 159 funds that will rely on the government fund exemption = 318 hours) + (8 hours x 205 institutional prime funds = 1,640 hours) = 2,933 hours. For purposes of this PRA analysis, our calculations of the number of institutional prime funds and funds that will rely on the government fund exemption are based on Form N-MFP data as of February 28, 2014.

2480 This estimate is based on the following calculation: 2,933 hours x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $935,627.

2481 This estimate is based on the following calculation: 2,933 burden hours ÷ 3 = 977 average annual burden hours; $935,627 burden costs ÷ 3 = $311,876 average annual burden cost.

have not chosen to retain the ability to impose liquidity fees and suspend redemptions) will incur an ongoing burden of one hour, at a time cost of $319,[2482] each year to: 1) review and update the SAI disclosure regarding historical occasions on which the fund has considered or imposed liquidity fees or gates; 2) review and update the SAI disclosure regarding historical occasions in which the fund has received financial support from a sponsor or fund affiliate; and 3) inform investors of any fees or gates currently in place (as appropriate), or the transition to a floating NAV (as appropriate), by means of a prospectus supplement. The Commission also estimates that each government money market fund that has not chosen to retain the ability to impose liquidity fees and suspend redemptions will incur an ongoing burden of 0.5 hours, at a time cost of $160,[2483] each year to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. In aggregate, we estimate that all money market funds will incur an annual burden of 480 hours,[2484] at a time cost of $153,120,[2485] to comply with the Form N-1A disclosure requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in

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2482 This estimate is based on the following calculation: (0.5 hours (to review and update the SAI disclosure regarding historical occasions on which the fund has considered or imposed liquidity fees or gates, and to inform investors of any fees or gates currently in place (as appropriate), or the transition to a floating NAV (as appropriate), by means of a prospectus supplement) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $159.5) + (0.5 hours (to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate) x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $159.5) = $319.

2483 This estimate is based on the following calculation: (0.5 hours x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = approximately $160.

2484 This estimate is based on the following calculations: (1 hour x 400 funds (559 money market funds – 159 funds that will rely on the government fund exemption) = 400 hours) + (0.5 hours x 159 funds that will rely on the government fund exemption = approximately 80 hours) = 480 hours.

2485 This estimate is based on the following calculation: 480 hours x $319 (blended hourly rate for a compliance attorney ($334) and a senior programmer ($303)) = $153,120.

an average annual increased burden of 2.3 hours per fund (other than government funds that have not chosen to retain the ability to impose liquidity fees and suspend redemptions, and floating NAV money market funds),[2486] at a time cost of $744.[2487] Government funds that have not chosen to retain the ability to impose liquidity fees and suspend redemptions will incur an average annual increased burden of 1 hour,[2488] at a time cost of $319,[2489] to comply with the Form N-1A disclosure requirements. Floating NAV money market funds will incur an average annual increased burden of 3.3 hours,[2490] at a time cost of $1,063,[2491] to comply with the Form N-1A disclosure requirements.

In total, the Commission estimates that all money market funds will incur an average annual increased burden of 1,285 hours,[2492] at a time cost of $413,716,[2493] to comply with the

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2486 This estimate is based on the following calculation: 5 burden hours (year 1) + 1 burden hour (year 2) + 1 burden hour (year 3) ÷ 3 = approximately 2.3 burden hours.

2487 This estimate is based on the following calculation: $1,595 (year 1 monetized burden hours) + $319 (year 2 monetized burden hours) + $319 (year 3 monetized burden hours) ÷ 3 = approximately $744.

2488 This estimate is based on the following calculation: 2 burden hours (year 1) + 0.5 burden hours (year 2) + 0.5 burden hours (year 3) ÷ 3 = 1 burden hour.

2489 This estimate is based on the following calculation: $638 (year 1 monetized burden hours) + $160 (year 2 monetized burden hours) + $160 (year 3 monetized burden hours) ÷ 3 = approximately $319.

2490 This estimate is based on the following calculation: 8 burden hours (year 1) + 1 burden hour (year 2) + 1 burden hour (year 3) ÷ 3 = approximately 3.3 burden hours.

2491 This estimate is based on the following calculation: $2,552 (year 1 monetized burden hours) + $319 (year 2 monetized burden hours) + $319 (year 3 monetized burden hours) ÷ 3 = approximately $1,063.

2492 This estimate is based on the following calculation: (2.3 hours x 195 funds (559 money market funds – 205 institutional prime funds – 159 funds that will rely on the government fund exemption) = approximately 449 hours) + (1 hour x 159 funds that will rely on the government fund exemption = 159 hours) + (3.3 hours x 205 institutional prime funds = approximately 677 hours) = 1,285 hours.

The current approved collection of information for Form N-1A is 1,578,689 hours annually for all investment companies. Adding 1,285 hours to this approved collection of information will result in a burden of 1,579,974 hours each year.

2493 This estimate is based on the following calculation: ($744 x 195 funds (559 money market funds – 205 institutional prime funds – 159 funds that will rely on the government fund exemption) = $145,080) + ($319 x 159 funds that will rely on the government fund exemption = $50,721) + ($1,063 x 205 institutional prime funds = $217,915) = $413,716.

Form N-1A disclosure requirements. Additionally, we estimate that there will be annual aggregate external costs (in the form of printing costs) of $6,269,175 associated with the Form N-1A disclosure requirements.[2494]

H. Advisers Act Rule 204(b)-1 and Form PF

Advisers Act rule 204(b)-1 requires SEC-registered private fund advisers that have at least $150 million in private fund assets under management to report certain information regarding the private funds they advise on Form PF. The rule implements sections 204 and 211 of the Advisers Act, as amended by the Dodd-Frank Act, which direct the Commission (and the CFTC) to supply FSOC with information for use in monitoring potential systemic risk by establishing reporting requirements for private fund advisers. Form PF divides respondents into groups based on their size and the types of private funds they manage, with some groups of advisers required to file more information than others or more frequently than others. Large liquidity fund advisers—the only group of advisers affected by today's amendments to Form PF—must provide information concerning their liquidity funds on Form PF each quarter. Form PF contains a collection of information under the PRA.[2495] This new collection of

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2494 We expect that a fund that must include disclosure about historical occasions on which the fund has considered or imposed liquidity fees or gates, or historical instances in which the fund has received financial support from a sponsor or fund affiliate, will need to add 2-8 pages of new disclosure to its registration statement. Adding this new disclosure will therefore increase the number of pages in, and change the printing costs of, the fund's registration statement. The Commission calculates the external costs associated with the proposed Form N-1A disclosure requirements as follows: 5 pages (mid-point of 2 pages and 8 pages) x $0.045 per page x 27,863,000 money market fund registration statements printed annually = $6,269,175 annual aggregate external costs. Our estimate of potential printing ($0.045 per page: $0.035 for ink + $0.010 for paper) is based on data provided by Lexecon Inc. in response to Investment Company Act Release No. 27182 (Dec. 8, 2005) [70 FR 74598 (Dec. 15, 2005)]. *See* Comment Letter of Lexecon Inc. (Feb. 13, 2006) ("Lexecon Comment Letter"). For purposes of this analysis, our best estimate of the number of money market fund registration statements printed annually is based on 27,863,000 money market fund shareholder accounts in 2012. *See* Investment Company Institute, *2013 Investment Company Fact Book*, at 178, *available at* http://www.ici.org/pdf/2013_factbook.pdf.

2495 For purposes of the PRA analysis, the current burden associated with the requirements of rule 204(b)-1 is information will be mandatory for large liquidity fund advisers, and will be kept confidential to the extent discussed above in section III.H. Based on data filed on Form PF and Form ADV, the Commission estimates that, as of April 30, 2014, there were 28 large liquidity fund advisers subject to this quarterly filing requirement that collectively advised 56 liquidity funds.

1. Discussion of Amendments

Under our final amendments, for each liquidity fund it manages, a large liquidity fund adviser will be required to provide, quarterly and with respect to each portfolio security, certain additional information for each month of the reporting period.[2496] We discuss the additional information we are requiring large liquidity fund advisers to provide in more detail in section III.H.1 above. Generally, however, this additional information is largely the same as the reporting requirements for registered money market funds under amended Form N-MFP, with some modifications to better tailor the reporting to private liquidity funds.[2497] As proposed, the final amendments will also remove current Questions 56 and 57 on Form PF, which generally require large liquidity fund advisers to provide information about their liquidity funds' portfolio holdings broken out by asset class (rather than security by security).[2498] The amendments will also require, as proposed, large liquidity fund advisers to identify any money market fund advised by the adviser or its related persons that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a liquidity

included in the collection of information requirements of Form PF.

2496 *See* Question 63 of Form PF. Advisers will be required to file this information with their quarterly liquidity fund filings with data for the quarter broken down by month. Advisers will not be required to file information on Form PF more frequently as a result of today's proposal because large liquidity fund advisers already are required to file information each quarter on Form PF. *See* Form PF: Instruction 9.

2497 *See supra* section IV.H.1 for a more detailed discussion of these additional reporting requirements.

2498 *See supra* section IV.H.1.

fund the adviser reports about on Form PF.[2499] In addition, the final amendments have been reorganized to minimize system changes and costs as much as possible.[2500] Finally, our changes from the proposal to the final amendments to Form PF generally reflect any changes from the proposal to the final amendments to Form N-MFP, such as the elimination of the proposed lot level reporting.[2501]

2. *Current Burden*

The current approved collection of information for Form PF is 258,000 annual aggregate hours and $25,684,000 in aggregate external costs. In estimating these total approved burdens, we estimated that the amortized average annual burden of Form PF for large liquidity fund advisers in particular would be 290 hours per large liquidity fund adviser for each of the first three years, resulting in an aggregate amortized annual burden of 23,200 hours for large liquidity fund advisers for each of the first three years.[2502] We estimated that the external cost burden would range from $0 to $50,000 per large private fund adviser, which resulted in aggregate estimated external costs attributable to large liquidity fund advisers of $4,000,000. The external cost estimates also included estimates for filing fees, which are $150 per annual filing and $150

2499 *See* Question 64 to Form PF. *See also supra* section IV.H.1.

2500 By eliminating lot level sale data reporting (proposed question 64 of Form PF) and accordingly renumbering proposed question 65 (parallel funds) as question 64, we have restructured the amendments to Form PF so that the amendments keep the same numbering range as the current form. *See* question 64 of Form PF; Axiom Comment Letter (suggesting to reorganize and consolidate the questions in the proposed form amendments to minimize the system changes necessary to file the form).

2501 *See supra* section IV.H.1. *See also, e.g., supra* section IV.C.1 (New Reporting Requirements).

2502 *See* Form PF Adopting Release *supra* note 1536 ("290 burden hours on average per year x 80 large liquidity fund advisers = 23,200 hours.").

per quarterly filing, resulting in annual filings costs for large liquidity fund advisers of $48,000.[2503]

3. Change in Burden

The Commission continues to estimate that, as proposed, the paperwork burdens associated with Form N-MFP (as adopted with our final amendments) are representative of the burdens that large liquidity fund advisers could incur as a result of our final amendments to Form PF because advisers will be required to file on Form PF virtually the same information money market funds will file on Form N-MFP as amended and because, as discussed in section IV.H, virtually all of the 28 large liquidity funds advisers affected already manage a money market fund or have a related person that manages a money market fund. Therefore, we continue to believe that large liquidity fund advisers—when required to compile and report for their liquidity funds generally the same information virtually all of them already report for their money market funds—likely will use the same (or comparable) staff and/or external service providers to provide portfolio holdings information on Form N-MFP and Form PF.

Commenters provided no concrete cost estimates with respect to our amendments to Form PF. As noted in section IV.H above, although one commenter asserted that the costs of compliance for Form PF would outweigh the benefits,[2504] most commenters who discussed the Form PF amendments generally supported them.[2505] For the reasons discussed in section IV.C,

2503 This estimate is based on the following calculation: ($150 quarterly filing fee x 4 quarters) x 80 large liquidity fund advisers) = $48,000.

2504 *See* SSGA Comment Letter. *See also, e.g.,* Wells Fargo Comment Letter (noting that the "[t]he burdens associated with complying with the proposed amendments to Form PF are substantial" as a reason for why the proposed amendments to Form PF should not apply to unregistered liquidity vehicles owned exclusively by registered funds and complying with rule 12d1-1 under the Investment Company Act.)

2505 *See, e.g.,* Goldman Sachs Comment Letter; ICI Comment Letter; Oppenheimer Comment Letter.

we believe our original cost estimates continue for Form N-MFP to be reasonable. Likewise, for the same reasons, the Commission generally has not modified from our proposal the cost estimates associated with the final amendments to Form PF.[2506] However, as with Form N-MFP, the Commission has modified its estimates for Form PF based on updated industry data on time costs as well as the updated total number of large liquidity funds that would be affected.

Accordingly, the Commission estimates that our final amendments to Form PF will result in paperwork burden hours and external costs as follows. First, as discussed in the PRA analysis for our amendments to Form N-MFP, the Commission estimates that the average annual amortized burdens per money market fund imposed by Form N-MFP as amended are 149 hours[2507] and $8,552 in external costs.[2508] As discussed above, the Commission estimates that large liquidity fund advisers generally will incur similar burdens for each of their liquidity funds. Accordingly, we estimate that large liquidity fund advisers will incur a time cost of $38,740 associated with these 149 estimated burden hours for each large liquidity fund.[2509] The

2506 Similarly, we estimate that our various other final changes to Form PF, such as those referenced in *supra* note 2497 - 2500 and the accompanying discussion, will not significantly alter the estimated paperwork burdens.

2507 As discussed in the PRA analysis for Form N-MFP, the Commission estimates that Form N-MFP, as amended, will result in an aggregate annual, amortized collection of information burden of 83,412 hours. *See supra* note 2343 and accompanying text. Based on the Commission's estimated 559 money market fund respondents, this results in a per fund annual burden of approximately 149 hours.

2508 As discussed in the PRA analysis for Form N-MFP, the Commission estimates that Form N-MFP, as amended, will result in an aggregate external cost burden of $4,780,736. *See supra* note 2363 and accompanying text. Based on the Commission's estimated 559 money market fund respondents, this results in a per fund annual external cost burden of approximately $8,552.

2509 The Commission estimates, as discussed above, that large liquidity fund advisers are likely to use the same (or comparable) staff and/or external service providers to provide portfolio holdings information on Form N-MFP and Form PF. Accordingly, the Commission estimates that large liquidity fund advisers will use the same professionals, and in comparable proportions (conservatively based on the proportion of professionals used with respect to our final amendments to Form N-MFP as amortized over the first three years), for purposes of the Commission's estimate of time costs associated with our amendments to Form PF. As discussed in *supra* note 2362 and the accompanying text, amortizing these additional hourly and cost burdens of our final amendments to Form N-MFP over three years results in an average annual

Commission therefore estimates increased annual burdens per large liquidity fund adviser with two large liquidity funds each of 298 burden hours, at a total time cost of $79,566, and external costs of $17,104.[2510] This will result in increased aggregate burden hours across all large liquidity fund advisers of 8,344 burden hours,[2511] at a time cost of $2,227,848,[2512] and $478,912 in external costs.[2513] Finally, the aggregate annual, amortized paperwork burden for Form PF as amended therefore will be 251,264 burden hours[2514] and $23,531,712 in external costs.[2515]

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aggregate burden of approximately 38,198 hours at a total time cost of $9,914,238, or average time costs of approximately $260 per hour. This results in the following estimated time cost for the Commission's estimated 149 hour burdens per liquidity fund: 149 burden hours (per liquidity fund for Form PF) x $260 (average per hour time costs) = $38,740 additional time costs per fund.

2510 This estimate assumes for purposes of the PRA that each large liquidity fund adviser advises two large liquidity funds (56 total liquidity funds ÷ 28 large liquidity fund advisers). Each large liquidity fund adviser therefore will incur the following burdens: 149 estimated burden hours per fund x 2 large liquidity funds = 298 burden hours per large liquidity fund adviser; $38,740 estimated time cost per fund x 2 large liquidity funds = $77,480 time cost per large liquidity fund adviser; and $8,552 estimated external costs per fund (based on $4,780,736 in total external costs for 559 funds with respect to Form N-MFP) x 2 large liquidity funds = $17,104 external costs per large liquidity fund adviser.

2511 This estimate is based on the following calculation: 298 estimated additional burden hours per large liquidity fund adviser x 28 large liquidity fund advisers = 8,344.

2512 This estimate is based on the following calculation: $77,480 estimated time cost per large liquidity fund adviser x 28 large liquidity fund advisers = $2,169,440.

2513 This estimate is based on the following calculation: $17,104 estimated external costs per large liquidity fund adviser x 28 large liquidity fund advisers = $478,912.

2514 Form PF's current approved burden includes 23,200 aggregate burden hours associated with large liquidity fund advisers, based on 80 large liquidity fund advisers and an estimated 290 burden hours per large liquidity fund adviser. As calculated below, because we are reducing our estimate of the number of large liquidity funds from 80 to 28, our estimates of costs will actually decrease on an aggregate basis. However, on a per fund basis, our amendments to Form PF will increase the burden hours per large liquidity fund adviser by 298 hours, as discussed above, resulting in a total of 588 burden hours per large liquidity fund adviser. Multiplying 588 by the current estimated number of 28 large liquidity fund advisers results in 16,464 burden hours attributable to large liquidity fund advisers, a 6,736 reduction from the approved burden hours attributable to large liquidity fund advisers. This therefore results in 249,300 total burden hours for all of Form PF (current approved 258,000 burden hours – 6,736 reduction = 251,264).

2515 Form PF's current approved burden includes $25,684,000 in external costs, which includes $4,000,000 attributable to large liquidity fund advisers for certain costs ($50,000 per adviser), and $48,000 (or $600 per adviser) for filing fees, in both cases assuming 80 large liquidity fund adviser respondents. Form PF's approved burden therefore includes a total of $4,048,000 in external costs attributable to large liquidity fund advisers. As calculated below, because we are reducing our estimate of the number of large liquidity funds from 80 to 28, our estimates of external costs will actually decrease on an aggregate basis. However, we estimate external costs to increase on a per fund basis. Reducing these estimates to reflect the

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[2516] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis ("IRFA") of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[2517] As stated in the Proposing Release, based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities.[2518] Accordingly, the Commission certified, pursuant to section 605(b) of the RFA, that new rule 30b1-8 and Form N-CR under the Investment Company Act of 1940 and the proposed amendments to rules 2a-7, 12d3-1, 18f-3, 22e-3, 30b1-7, and 31a-1 and Forms N-MFP and N-1A under the Investment Company Act, Form PF under the Investment Advisers Act of 1940, and rules 482 and 419 under the Securities Act of 1933, if adopted would not have a significant economic impact on a substantial number of small entities.[2519] We included this certification in section VI of the Proposing Release.[2520]

We encouraged written comments regarding this certification.[2521] One commenter

Commission's current estimate of 28 large liquidity fund adviser respondents results in costs of $1,400,000 (28 large liquidity fund advisers x $50,000 per adviser) and $16,800 (28 large liquidity fund advisers x $600), respectively, for an aggregate cost of $1,416,800. These costs, plus the additional external costs associated with our amendments to Form PF ($478,912 as estimated above), result in total external costs attributable to large liquidity fund advisers of $1,895,712, a reduction of $2,152,288 from the currently approved external costs attributable to large liquidity fund advisers. This therefore results in total external cost for all of Form PF of $23,531,712 (current approved external cost burden of $25,684,000 - $2,152,288 reduction = $23,531,712).

2516 5 U.S.C. 603(a).

2517 5 U.S.C. 605(b).

2518 *See* Proposing Release, *supra* note 25, at n.1249 and accompanying text.

2519 5 U.S.C. 605(b).

2520 *See* Proposing Release *supra* note 25, section VI.

2521 *See Id.*

responded.[2522] Among other things, this commenter argued that, while our certification evaluated the impact of our amendments on money market funds to which the amendments directly apply, we did not account for the "impact on numerous smaller entities that are investors in money market funds or that do business with money market funds…."[2523] This RFA certification is properly based on the economic impact of the amended rule on the entities that are subject to the requirements of the amended rule.[2524] The numerous other entities suggested by the commenter are not subject to the requirements of the amended rule and also are not included in the definition of "small business" or "small organization" for purposes of the RFA under the Investment Company Act,[2525] Investment Advisers Act[2526] or Securities Act.[2527] We recognize, however, that entities other than those subject to the requirements of the amended rule may be affected by the amendments we adopt today. As such, we have discussed in the appropriate sections of this

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2522 *See* Federated X Comment Letter.

2523 *Id.*

2524 In advancing the argument, the commenter relies on *Aeronautical Repair Station Association v. Federal Aviation Administration*, 494 F.3d 161 (DC Cir. 2007). This case is inapposite, however, because there the agency's own rulemaking release expressly stated that the rule *imposed responsibilities directly* on certain small business contractors. The court reaffirmed its prior holdings that the RFA limits its application to small entities ''which will be subject to the proposed regulation—that is, those small entities to which the proposed rule will apply.'' *Id.* at 176 (emphasis and internal quotations omitted). *See also* *Cement Kiln Recycling Coal v. EPA*, 255F. 3d 855, 869 (DC Cir. 2001).

2525 *See* rule 0-10 of the Investment Company Act, which defines the term "small business" or "small organization" for purposes of rules under the Act to mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

2526 *See* rule 0-07 of the Investment Advisers Act, which defines the term "small business" or "small organization" for purposes of rules under the Act to mean an investment adviser that, among other things, has assets under management of less than $25 million. Our changes to rule 204(b)-1 and Form PF would only apply to certain large liquidity fund advisers with at least $1 billion in combined liquidity fund and money market fund assets, well above the $25 million threshold in rule 0-7 under the Investment Advisers Act.

2527 *See* rule 157 of the Securities Act, which, with respect to investment companies, adopts the definition of rule 0-10 of the Investment Company Act. We also note that our changes to rule 482 under the Securities Act will only apply to advertisements by money market funds and not by any other issuers, whereas we are making only technical, conforming amendments to rule 419 under the Securities Act.

Release the effects of today's amendments on entities other than those subject to the requirements of the amended rule.[2528]

The commenter also noted that our RFA analysis fails to consider money market funds that have yet to enter the industry and may need to begin their operations as "small entities."[2529] We believe that the commenter misconstrues the RFA, which contemplates that an agency shall calculate the number of small businesses that currently would be affected by its proposed regulation.[2530]

For the reasons described above, the Commission again certifies that the amendments to new rule 30b1-8 and Form N-CR under the Investment Company Act of 1940 and the amendments to rules 2a-7, 12d3-1, 18f-3, 22e-3, 30b1-7, and 31a-1 and Forms N-MFP and N-1A under the Investment Company Act, Form PF under the Investment Advisers Act of 1940, and rules 482 and 419 under the Securities Act of 1933, would not, if adopted have a significant economic impact on a substantial number of small entities.

VI. Update to Codification of Financial Reporting Policies

The Commission amends the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] as follows:

1. By adding new Section 220 "Cash Equivalents" and including the text of the second and third paragraphs of Section III.A.7 and the third paragraph of Section III.B.6.b of this

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2528 *See, e.g., supra* sections III.A.5, III.B.8, III.C and III.K.

2529 *See* Federated X Comment Letter.

2530 For example, the Office of Advocacy for the United States Small Business Administration ("SBA") publishes a guide for government agencies regarding how to comply with the RFA, which contains an example of an appropriate RFA certification. This example has an agency calculate the number of small businesses that currently would be affected by a proposed regulation. *See* "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act," available at http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.

Release.

2. By adding a new Section 404.05.c "Guidance on the Amortized Cost Method of Valuation and Other Valuation Concerns" and including the first two introductory paragraphs before Section III.D.1., except for the phrase "After further consideration, and as suggested by a number of commenters," and except for footnote 870.

   a. By adding the subject heading "1. Use of Amortized Cost Valuation", and including the first, third and fourth paragraphs, except for footnote 874, of Section III.D.1.

   b. By adding the subject heading "2. Other Valuation Matters" and including the first sentence of the first paragraph of Section III.D.2.

   c. By adding the subject heading "Fair Value for Thinly Traded Securities" and including below the subject heading, the fourth and fifth paragraphs of Section III.D.2.

   d. By adding the subject heading "Use of Pricing Services" and including below the subject heading, the first sentence of the sixth paragraph except for the phrase "As noted above," and the seventh, eighth and ninth paragraphs of Section III.D.2.

The Codification is a separate publication of the Commission. It will not be published in the Federal Register or Code of Federal Regulations. For more information on the Codification of Financial Reporting Policies, contact the Commission's Public Reference Room at 202-551-5850.

VII. STATUTORY AUTHORITY

The Commission is adopting amendments to rule 419 under the rulemaking authority set forth in sections 3, 4, 5, 7, and 19 of the Securities Act [15 U.S.C. 77c, 77d, 77e, 77g, and 77s].

The Commission is adopting amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is adopting amendments to rule 2a-7 under the exemptive and rulemaking authority set forth in sections 6(c), 8(b), 22(c), 35(d), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-6(c), 80a-8(b), 80a-22(c), 80a-34(d), and 80a-37(a)]. The Commission is adopting amendments to rule 12d3-1 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c) and 80a-37(a)]. The Commission is adopting amendments to rule 18f-3 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c) and 80a-37(a)]. The Commission is adopting amendments to rule 22e-3 pursuant to the authority set forth in sections 6(c), 22(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), 80a-22(e), and 80a-37(a)]. The Commission is adopting amendments to rule 30b1-7 and Form N-MFP pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 80a-29(b), 80a-30(a), and 80a-37(a)]. The Commission is adopting new rule 30b1-8 and Form N-CR pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 80a-29(b), 80a-30(a), and 80a-37(a)]. The Commission is adopting amendments to rule 31a-1 pursuant to authority set forth in sections 6(c) and 38(a)] of the Investment Company Act [15 U.S.C. 80a-6(c) and 80a-37(a)]. The Commission is adopting amendments to Form N-1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-24(a), 80a-24(g), 80a-29, and 80a-37]. The Commission is adopting amendments to Form PF pursuant to authority set forth in Sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b-4(b) and 80b-11(e)].

List of Subjects

17 CFR Parts 230, 239, 270, 274, and 279

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULES AND FORMS

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

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2. Section 230.419(b)(2)(iv)(B) is amended by removing the phrase "paragraphs (c)(2), (c)(3), and (c)(4)" and adding in its place "paragraph (d)".

3. Section 230.482(b)(3)(i) is amended by adding after "An advertisement for a money market fund" the phrase "that is a government money market fund, as defined in § 270.2a-7(a)(16) of this chapter, or a retail money market fund, as defined in § 270.2a-7(a)(25) of this chapter".

4. Section 230.482(b)(4) is revised to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(b) * * *

(4) *Money market funds.* (i) An advertisement for an investment company that holds itself out to be a money market fund, that is not a government money market fund, as defined in § 270.2a-7(a)(16) of this chapter, or a retail money market fund, as defined in § 270.2a-7(a)(25) of this chapter, must include the following statement:

> You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in § 270.2a-7(a)(16) of this chapter or a retail money market fund, as defined in § 270.2a-7(a)(25) of this chapter, and that is subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter (or is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)), must include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(iii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in § 270.2a-7(a)(16) of this chapter, that is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)), must include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per

share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Note to paragraph (b)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, the statement may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.") for the term of the agreement. For purposes of this Note, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a-9 of this chapter, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

PART 270 – RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

6. Section 270.2a-7 is revised to read as follows:

§ 270.2a-7 Money market funds.

(a) *Definitions*—(1) *Acquisition (or acquire)* means any purchase or subsequent rollover (but does not include the failure to exercise a demand feature).

(2) *Amortized cost method of valuation* means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset-backed security* means a fixed income security (other than a government security) issued by a special purpose entity (as defined in this paragraph (a)(3)), substantially all of the assets of which consist of qualifying assets (as defined in this paragraph (a)(3)). *Special purpose entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from qualifying assets, but does not include a registered investment company. *Qualifying assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized fully* has the same meaning as defined in § 270.5b-3(c)(1) except that § 270.5b-3(c)(1)(iv)(C) and (D) shall not apply.

(6) *Conditional demand feature* means a demand feature that is not an unconditional demand feature. A conditional demand feature is not a guarantee.

(7) *Conduit security* means a security issued by a municipal issuer (as defined in this paragraph (a)(7)) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A conduit security does not include a security that is:

(i) Fully and unconditionally guaranteed by a municipal issuer;

(ii) Payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer);

(iii) Related to a project owned and operated by a municipal issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer.

(8) *Daily liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within one business day; or

(iv) Amounts receivable and due unconditionally within one business day on pending sales of portfolio securities.

(9) *Demand feature* means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise.

(10) *Demand feature issued by a non-controlled person* means a demand feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the demand feature (*control* means "control" as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a-2(a)(9)); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security.

(11) *Designated NRSRO* means any one of at least four nationally recognized statistical rating organizations, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)), that:

(i) The money market fund's board of directors:

(A) Has designated as an NRSRO whose credit ratings with respect to any obligor or security or particular obligors or securities will be used by the fund to determine whether a security is an eligible security; and

(B) Determines at least once each calendar year issues credit ratings that are sufficiently reliable for such use;

(ii) Is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a-2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security; and

(iii) The fund discloses in its statement of additional information is a designated NRSRO, including any limitations with respect to the fund's use of such designation.

(12) *Eligible security* means:

(i) A rated security with a remaining maturity of 397 calendar days or less that has received a rating from the requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(12)(i) of this section, as determined by the money market fund's board of directors; provided, however, that: a security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an unrated security is not an eligible security if the security has received a long-term rating from any designated NRSRO that is not within the designated NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the requisite NRSROs in one of the three highest rating categories.

(iii) In addition, in the case of a security that is subject to a demand feature or guarantee:

(A) The guarantee has received a rating from a designated NRSRO or the guarantee is issued by a guarantor that has received a rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the guarantee, unless:

(1) The guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the guarantee (other than a sponsor of a special purpose entity with respect to an asset-backed security);

(2) The security subject to the guarantee is a repurchase agreement that is collateralized fully; or

(3) The guarantee is itself a government security; and

(B) The issuer of the demand feature or guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the demand feature or guarantee is substituted with another demand feature or guarantee (if such substitution is permissible under the terms of the demand feature or guarantee).

(13) *Event of insolvency* has the same meaning as defined in § 270.5b-3(c)(2).

(14) *First tier security* means any eligible security that:

(i) Is a rated security that has received a short-term rating from the requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing);

(ii) Is an unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(14)(i) of this section, as determined by the fund's board of directors;

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a government security.

(15) *Floating rate security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(16) *Government money market fund* means a money market fund that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully.

(17) *Government security* has the same meaning as defined in section 2(a)(16) of the Act (15 U.S.C. 80a-2(a)(16)).

(18) *Guarantee*:

(i) Means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an unconditional demand feature, an obligation that entitles the holder to receive upon the later of exercise or the settlement of the transaction the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A guarantee includes a letter of credit, financial guaranty (bond) insurance, and an unconditional demand feature (other than an unconditional demand feature provided by the issuer of the security).

(ii) The sponsor of a special purpose entity with respect to an asset-backed security shall be deemed to have provided a guarantee with respect to the entire principal amount of the asset-backed security for purposes of this section, except paragraphs (a)(12)(iii) (definition of eligible security), (d)(2)(iii) (credit substitution), (d)(3)(iv)(A) (fractional guarantees) and (e) (guarantees not relied on) of this section, unless the money market fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, and maintains a record of this determination (pursuant to paragraphs (g)(7) and (h)(6) of this section).

(19) *Guarantee issued by a non-controlled person* means a guarantee issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (*control* means "control" as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a-2(a)(9))); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security.

(20) *Illiquid security* means a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund.

(21) *Penny-rounding method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(22) *Rated security* means a security that meets the requirements of paragraphs (a)(22)(i) or (ii) of this section, in each case subject to paragraph (a)(22)(iii) of this section:

(i) The security has received a short-term rating from a designated NRSRO, or has been issued by an issuer that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a guarantee that has received a short-term rating from a designated NRSRO, or a guarantee issued by a guarantor that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the guarantee; but

(iii) A security is not a rated security if it is subject to an external credit support agreement (including an arrangement by which the security has become a refunded security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(22)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(22)(ii) of this section.

(23) *Refunded security* has the same meaning as defined in § 270.5b-3(c)(4).

(24) *Requisite NRSROs* means:

(i) Any two designated NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one designated NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that designated NRSRO.

(25) *Retail money market fund* means a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons.

(26) *Second tier security* means any eligible security that is not a first tier security.

(27) *Single state fund* means a tax exempt fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(28) *Tax exempt fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(29) *Total assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, means the total value of the money market fund's assets, as defined in section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)) and the rules thereunder.

(30) *Unconditional demand feature* means a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(31) *United States dollar-denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(32) *Unrated security* means a security that is not a rated security.

(33) *Variable rate security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(34) *Weekly liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Government securities that are issued by a person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States that:

(A) Are issued at a discount to the principal amount to be repaid at maturity without provision for the payment of interest; and

(B) Have a remaining maturity date of 60 days or less.

(iv) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within five business days; or

(v) Amounts receivable and due unconditionally within five business days on pending sales of portfolio securities.

(b) *Holding out and use of names and titles*—(1) *Holding out.* It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a-33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a-24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(2) *Names.* It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a-34(d)) for a registered

investment company to adopt the term "money market" as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(3) *Titles.* For purposes of paragraph (b)(2) of this section, a name that suggests that a registered investment company is a money market fund or the equivalent thereof includes one that uses such terms as "cash," "liquid," "money," "ready assets" or similar terms.

(c) *Pricing and Redeeming Shares*—(1) *Share price calculation.*

(i) The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by a government money market fund or retail money market fund, notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)) and of §§ 270.2a-4 and 270.22c-1 thereunder, may be computed by use of the amortized cost method and/or the penny-rounding method. To use these methods, the board of directors of the government or retail money market fund must determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the amortized cost method and/or the penny-rounding method. The government or retail money market fund may continue to use such methods only so long as the board of directors believes that they fairly reflect the market-based net asset value per share and the fund complies with the other requirements of this section.

(ii) Any money market fund that is not a government money market fund or a retail money market fund must compute its price per share for purposes of distribution, redemption and repurchase by rounding the fund's current net asset value per share to a minimum of the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (*e.g.* \$10.000 per share, or \$100.00 per share).

(2) *Liquidity fees and temporary suspensions of redemptions.* Except as provided in paragraphs (c)(2)(iii) and (v) of this section, and notwithstanding sections 22(e) and 27(i) of the Act (15 U.S.C. 80a-22(e) and 80a-27(i)) and § 270.22c-1:

(i) *Discretionary liquidity fees and temporary suspensions of redemptions.* If, at any time, the money market fund has invested less than thirty percent of its total assets in weekly liquid assets, the fund may institute a liquidity fee (not to exceed two percent of the value of the shares redeemed) or suspend the right of redemption temporarily, subject to paragraphs (c)(i)(A) and (B) of this section, if the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that the fee or suspension of redemptions is in the best interests of the fund.

(A) *Duration and application of discretionary liquidity fee.* Once imposed, a discretionary liquidity fee must be applied to all shares redeemed and must remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing such liquidity fee is no longer in the best interests of the fund. Provided however, that if, at the end of a business day, the money market fund has invested thirty percent or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee, effective as of the beginning of the next business day.

(B) *Duration of temporary suspension of redemptions.* The temporary suspension of redemptions must apply to all shares and must remain in effect until the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that the temporary suspension of redemptions is no longer in the best interests of the fund. Provided, however, that the fund must restore the right of redemption on the earlier of:

(1) The beginning of the next business day following a business day that ended with the money market fund having invested thirty percent or more of its total assets in weekly liquid assets; or

(2) The beginning of the next business day following ten business days after suspending redemptions. The money market fund may not suspend the right of redemption pursuant to this section for more than ten business days in any rolling ninety calendar day period.

(ii) *Default liquidity fees*. If, at the end of a business day, the money market fund has invested less than ten percent of its total assets in weekly liquid assets, the fund must institute a liquidity fee, effective as of the beginning of the next business day, as described in paragraphs (c)(2)(ii)(A) and (B) of this section, unless the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing the fee is not in the best interests of the fund.

(A) *Amount of default liquidity fee*. The default liquidity fee shall be one percent of the value of shares redeemed unless the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines, at the time of initial imposition or later, that a higher or lower fee level is in the best interests of the fund. A liquidity fee may not exceed two percent of the value of the shares redeemed.

(B) *Duration and application of default liquidity fee.* Once imposed, the default liquidity fee must be applied to all shares redeemed and shall remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing such liquidity fee is not in the best interests of the fund. Provided however, that if, at the end of a business day, the money market fund has invested thirty percent or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee, effective as of the beginning of the next business day.

(iii) *Government money market funds.* The requirements of paragraphs (c)(2)(i) and (ii) of this section shall not apply to a government money market fund. A government money market fund may, however, choose to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of paragraph (c)(2)(i) and/or (ii) of this section and any other requirements that apply to liquidity fees and temporary suspensions of redemptions (*e.g.*, Item 4(b)(1)(ii) of Form N-1A (§ 274.11A of this chapter)).

(iv) *Variable contracts.* Notwithstanding section 27(i) of the Act (15 U.S.C. 80a-27(i)), a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee or temporary suspension of redemptions pursuant to paragraph (c)(2) of this section to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund.

(v) *Master feeder funds.* Any money market fund (a "feeder fund") that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)), shares of another money market fund (a "master fund") may not impose liquidity fees or temporary suspensions of redemptions under paragraphs (c)(2)(i) and (ii) of this section, provided however, that if a master fund, in which the feeder fund invests, imposes a liquidity fee or temporary suspension of redemptions pursuant to paragraphs (c)(2)(i) and (ii) of this section, then the feeder fund shall pass through to its investors the fee or redemption suspension on the same terms and conditions as imposed by the master fund.

(d) *Risk-limiting conditions*—(1) *Portfolio maturity.* The money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its investment objective; provided, however, that the money market fund must not:

(i) Acquire any instrument with a remaining maturity of greater than 397 calendar days;

(ii) Maintain a dollar-weighted average portfolio maturity ("WAM") that exceeds 60 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments ("WAL").

(2) *Portfolio quality*—(i) *General.* The money market fund must limit its portfolio investments to those United States dollar-denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by a designated NRSRO) and that are at the time of acquisition eligible securities.

(ii) *Second tier securities.* No money market fund may acquire a second tier security with a remaining maturity of greater than 45 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments. Immediately after the acquisition of any second tier security, a money market fund must not have invested more than three percent of its total assets in second tier securities.

(iii) *Securities subject to guarantees.* A security that is subject to a guarantee may be determined to be an eligible security or a first tier security based solely on whether the guarantee is an eligible security or first tier security, as the case may be.

(iv) *Securities subject to conditional demand features.* A security that is subject to a conditional demand feature ("underlying security") may be determined to be an eligible security or a first tier security only if:

(A) The conditional demand feature is an eligible security or first tier security, as the case may be;

(B) At the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and

(1) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(2) The terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms; and

(C) The underlying security or any guarantee of such security (or the debt securities of the issuer of the underlying security or guarantee that are comparable in priority and security with the underlying security or guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(3) *Portfolio diversification*—(i) *Issuer diversification.* The money market fund must be diversified with respect to issuers of securities acquired by the fund as provided in paragraphs

(d)(3)(i) and (d)(3)(ii) of this section, other than with respect to government securities and securities subject to a guarantee issued by a non-controlled person.

(A) *Taxable and national funds.* Immediately after the acquisition of any security, a money market fund other than a single state fund must not have invested more than:

(1) Five percent of its total assets in securities issued by the issuer of the security, provided, however, that such a fund may invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for a period of up to three business days after the acquisition thereof; provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time; and

(2) Ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(B) *Single state funds.* Immediately after the acquisition of any security, a single state fund must not have invested:

(1) With respect to seventy-five percent of its total assets, more than five percent of its total assets in securities issued by the issuer of the security; and

(2) With respect to all of its total assets, more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(C) *Second tier securities.* Immediately after the acquisition of any second tier security, a money market fund must not have invested more than one half of one percent of its total assets in the second tier securities of any single issuer, and must not have invested more than 2.5 percent of its total assets in second tier securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(ii) *Issuer diversification calculations.* For purposes of making calculations under paragraph (d)(3)(i) of this section:

(A) *Repurchase agreements.* The acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is collateralized fully and the fund's board of directors has evaluated the seller's creditworthiness.

(B) *Refunded securities.* The acquisition of a refunded security shall be deemed to be an acquisition of the escrowed government securities.

(C) *Conduit securities.* A conduit security shall be deemed to be issued by the person (other than the municipal issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset-backed securities—(1) General.* An asset-backed security acquired by a fund ("primary ABS") shall be deemed to be issued by the special purpose entity that issued the asset-backed security, provided, however:

(i) Holdings of primary ABS. Any person whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS ("ten percent obligor") shall be deemed to be an issuer of the portion of the primary ABS such obligations represent; and

(ii) Holdings of secondary ABS. If a ten percent obligor of a primary ABS is itself a special purpose entity issuing asset-backed securities ("secondary ABS"), any ten percent obligor of such secondary ABS also shall be deemed to be an issuer of the portion of the primary ABS that such ten percent obligor represents.

(2) Restricted special purpose entities. A ten percent obligor with respect to a primary or secondary ABS shall not be deemed to have issued any portion of the assets of a primary ABS as

provided in paragraph (d)(3)(ii)(D)(1) of this section if that ten percent obligor is itself a special purpose entity issuing asset-backed securities ("restricted special purpose entity"), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the restricted special purpose entity and which is not itself a special purpose entity issuing asset-backed securities) are held by only one other special purpose entity.

(3) Demand features and guarantees. In the case of a ten percent obligor deemed to be an issuer, the fund must satisfy the diversification requirements of paragraph (d)(3)(iii) of this section with respect to any demand feature or guarantee to which the ten percent obligor's obligations are subject.

(E) *Shares of other money market funds.* A money market fund that acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (d)(3)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(F) *Treatment of certain affiliated entities—(1) General.* The money market fund, when calculating the amount of its total assets invested in securities issued by any particular issuer for purposes of paragraph (d)(3)(i) of this section, must treat as a single issuer two or more issuers of securities owned by the money market fund if one issuer controls the other, is controlled by the other issuer, or is under common control with the other issuer, provided that "control" for this purpose means ownership of more than 50 percent of the issuer's voting securities.

(2) Equity owners of asset-backed commercial paper special purpose entities. The money market fund is not required to aggregate an asset-backed commercial paper special

purpose entity and its equity owners under paragraph (d)(3)(ii)(F)*(1)* of this section provided that a primary line of business of its equity owners is owning equity interests in special purpose entities and providing services to special purpose entities, the independent equity owners' activities with respect to the SPEs are limited to providing management or administrative services, and no qualifying assets of the special purpose entity were originated by the equity owners.

(3) Ten percent obligors. For purposes of determining ten percent obligors pursuant to paragraph (d)(3)(ii)(D)*(1)*(i) of this section, the money market fund must treat as a single person two or more persons whose obligations in the aggregate constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS if one person controls the other, is controlled by the other person, or is under common control with the person, provided that "control" for this purpose means ownership of more than 50 percent of the person's voting securities.

(iii) *Diversification rules for demand features and guarantees.* The money market fund must be diversified with respect to demand features and guarantees acquired by the fund as provided in paragraphs (d)(3)(iii) and (d)(3)(iv) of this section, other than with respect to a demand feature issued by the same institution that issued the underlying security, or with respect to a guarantee or demand feature that is itself a government security.

(A) *General.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee, a money market fund must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, subject to paragraphs (d)(3)(iii)(B) and (d)(3)(iii)(C) of this section.

(B) *Tax exempt funds.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee (any such acquisition, a "demand feature or guarantee acquisition"), a tax exempt fund, with respect to eighty-five percent of its total assets, must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee; provided that any demand feature or guarantee acquisition in excess of ten percent of the fund's total assets in accordance with this paragraph must be a demand feature or guarantee issued by a non-controlled person.

(C) *Second tier demand features or guarantees.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, a security directly issued by the issuer of a demand feature or guarantee, or a security after giving effect to the demand feature or guarantee, in all cases that is a second tier security, a money market fund must not have invested more than 2.5 percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(iv) *Demand feature and guarantee diversification calculations*—(A) *Fractional demand features or guarantees.* In the case of a security subject to a demand feature or guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered demand features or guarantees.* In the case of a security subject to demand features or guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (d)(3)(iv)(A) of this section, each institution shall be deemed to have provided the demand feature or guarantee with respect to the entire principal amount of the security.

(v) *Diversification safe harbor*. A money market fund that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a-5(b)(1)) and the rules adopted thereunder.

(4) *Portfolio liquidity*. The money market fund must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a-22(e)) and any commitments the fund has made to shareholders; provided, however, that:

(i) *Illiquid securities*. The money market fund may not acquire any illiquid security if, immediately after the acquisition, the money market fund would have invested more than five percent of its total assets in illiquid securities.

(ii) *Minimum daily liquidity requirement*. The money market fund may not acquire any security other than a daily liquid asset if, immediately after the acquisition, the fund would have invested less than ten percent of its total assets in daily liquid assets. This provision does not apply to tax exempt funds.

(iii) *Minimum weekly liquidity requirement*. The money market fund may not acquire any security other than a weekly liquid asset if, immediately after the acquisition, the fund would have invested less than thirty percent of its total assets in weekly liquid assets.

(e) *Demand features and guarantees not relied upon*. If the fund's board of directors has determined that the fund is not relying on a demand feature or guarantee to determine the quality (pursuant to paragraph (d)(2) of this section), or maturity (pursuant to paragraph (i) of this section), or liquidity of a portfolio security (pursuant to paragraph (d)(4) of this section), and maintains a record of this determination (pursuant to paragraphs (g)(3) and (h)(7) of this section), then the fund may disregard such demand feature or guarantee for all purposes of this section.

(f) *Downgrades, defaults and other events*—(1) *Downgrades.*

(i) *General.* Upon the occurrence of either of the events specified in paragraphs (f)(1)(i)(A) and (B) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund:

(A) A portfolio security of a money market fund ceases to be a first tier security (either because it no longer has the highest rating from the requisite NRSROs or, in the case of an unrated security, the board of directors of the money market fund determines that it is no longer of comparable quality to a first tier security); and

(B) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any unrated security or second tier security held by the money market fund has, since the security was acquired by the fund, been given a rating by a designated NRSRO below the designated NRSRO's second highest short-term rating category.

(ii) *Securities to be disposed of.* The reassessments required by paragraph (f)(1)(i) of this section shall not be required if the fund disposes of the security (or it matures) within five business days of the specified event and, in the case of events specified in paragraph (f)(1)(i)(B) of this section, the board is subsequently notified of the adviser's actions.

(iii) *Special rule for certain securities subject to demand features.* In the event that after giving effect to a rating downgrade, more than 2.5 percent of the fund's total assets are invested in securities issued by or subject to demand features from a single institution that are second tier securities, the fund shall reduce its investment in securities issued by or subject to demand features from that institution to no more than 2.5 percent of its total assets by exercising the demand features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(2) *Defaults and other events.* Upon the occurrence of any of the events specified in paragraphs (f)(2)(i) through (iv) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any demand feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(i) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(ii) A portfolio security ceases to be an eligible security;

(iii) A portfolio security has been determined to no longer present minimal credit risks; or

(iv) An event of insolvency occurs with respect to the issuer of a portfolio security or the provider of any demand feature or guarantee.

(3) *Notice to the Commission.* The money market fund must notify the Commission of the occurrence of certain material events, as specified in Form N-CR (§ 274.222 of this chapter).

(4) *Defaults for purposes of paragraphs (f)(2) and (3) of this section.* For purposes of paragraphs (f)(2) and (3) of this section, an instrument subject to a demand feature or guarantee shall not be deemed to be in default (and an event of insolvency with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a guarantee with respect to an asset-backed security pursuant to paragraph (a)(18)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

(g) *Required procedures.* The money market fund's board of directors must adopt written procedures including the following:

(1) *Funds using amortized cost.* In the case of a government or retail money market fund that uses the amortized cost method of valuation, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(i) *Specific Procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing.* Written procedures shall provide:

(1) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at least daily, and at such other intervals that the board of directors determines appropriate and reasonable in light of current market conditions;

(2) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(3) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(2) *Funds using penny rounding.* In the case of a government or retail money market fund that uses the penny rounding method of pricing, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular

responsibility within the overall duty of care owed to its shareholders, must establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to assure to the extent reasonably practicable that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(3) *Securities for which maturity is determined by reference to demand features.* In the case of a security for which maturity is determined by reference to a demand feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the demand feature and, in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (d)(2)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(4) *Securities subject to demand features or guarantees.* In the case of a security subject to one or more demand features or guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (d)(2) of this section), maturity (pursuant to paragraph (i) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the security subject to the demand feature or guarantee, written procedures must require periodic evaluation of such determination.

(5) *Adjustable rate securities without demand features.* In the case of a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section, written procedures shall require

periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(6) *Ten percent obligors of asset-backed securities.* In the case of an asset-backed security, written procedures must require the fund to periodically determine the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section; provided, however, written procedures need not require periodic determinations with respect to any asset-backed security that a fund's board of directors has determined, at the time of acquisition, will not have, or is unlikely to have, ten percent obligors that are deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section, and maintains a record of this determination.

(7) *Asset-backed securities not subject to guarantees.* In the case of an asset-backed security for which the fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support in connection with the asset-backed security to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, written procedures must require periodic evaluation of such determination.

(8) *Stress Testing.* Written procedures must provide for:

(i) *General.* The periodic stress testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to have invested at least ten percent of its total assets in weekly liquid assets, and the fund's ability to minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section, the fund's ability to maintain the stable price per share established by the board of directors for the purpose of distribution, redemption and repurchase), based upon specified hypothetical events that include, but are not limited to:

(A) Increases in the general level of short-term interest rates, in combination with various levels of an increase in shareholder redemptions;

(B) A downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions;

(C) A widening of spreads compared to the indexes to which portfolio securities are tied in various sectors in the fund's portfolio (in which a sector is a logically related subset of portfolio securities, such as securities of issuers in similar or related industries or geographic region or securities of a similar security type), in combination with various levels of an increase in shareholder redemptions; and

(D) Any additional combinations of events that the adviser deems relevant.

(ii) A report on the results of such testing to be provided to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results), which report must include:

(A) The date(s) on which the testing was performed and an assessment of the money market fund's ability to have invested at least ten percent of its total assets in weekly liquid assets and to minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section to maintain the stable price per share established by the board of directors); and

(B) An assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year, including such information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing. The fund adviser must include a summary of the significant assumptions made when performing the stress tests.

(h) *Record keeping and reporting*—(1) *Written procedures*. For a period of not less than six years following the replacement of existing procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in this section must be maintained and preserved.

(2) *Board considerations and actions*. For a period of not less than six years (the first two years in an easily accessible place) a written record must be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(3) *Credit risk analysis*. For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the designated NRSRO ratings (if any) used to determine the status of the security as an eligible security, first tier security or second tier security shall be maintained and preserved in an easily accessible place.

(4) *Determinations with respect to adjustable rate securities*. For a period of not less

than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(5) of this section (that a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(5) *Determinations with respect to asset-backed securities.* For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(6) of this section (the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section). The written record must include:

(i) The identities of the ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section), the percentage of the qualifying assets constituted by the securities of each ten percent obligor and the percentage of the fund's total assets that are invested in securities of each ten percent obligor; and

(ii) Any determination that an asset-backed security will not have, or is unlikely to have, ten percent obligors deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section.

(6) *Evaluations with respect to asset-backed securities not subject to guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation

required by paragraph (g)(7) of this section (regarding asset-backed securities not subject to guarantees).

(7) *Evaluations with respect to securities subject to demand features or guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(4) of this section (regarding securities subject to one or more demand features or guarantees).

(8) *Reports with respect to stress testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(8)(ii) of this section must be maintained and preserved.

(9) *Inspection of records.* The documents preserved pursuant to paragraph (h) of this section are subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a-30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a-30(a)).

(10) *Website disclosure of portfolio holdings and other fund information.* The money market fund must post prominently on its website the following information:

(i) For a period of not less than six months, beginning no later than the fifth business day of the month, a schedule of its investments, as of the last business day or subsequent calendar day of the preceding month, that includes the following information:

(A) With respect to the money market fund and each class of redeemable shares thereof:

(1) The WAM; and

(2) The WAL.

(B) With respect to each security held by the money market fund:

(1) Name of the issuer;

(2) Category of investment (indicate the category that identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; and Non-Financial Company Commercial Paper. If Other Instrument, include a brief description);

(3) CUSIP number (if any);

(4) Principal amount;

(5) The maturity date determined by taking into account the maturity shortening provisions in paragraph (i) of this section (*i.e.*, the maturity date used to calculate WAM under paragraph (d)(1)(ii) of this section);

(6) The maturity date determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (*i.e.,* the maturity used to calculate WAL under paragraph (d)(1)(iii) of this section);

(7) Coupon or yield; and

(8) Value.

(ii) A schedule, chart, graph, or other depiction, which must be updated each business day as of the end of the preceding business day, showing, as of the end of each business day during the preceding six months:

(A) The percentage of the money market fund's total assets invested in daily liquid assets;

(B) The percentage of the money market fund's total assets invested in weekly liquid assets; and

(C) The money market fund's net inflows or outflows.

(iii) A schedule, chart, graph, or other depiction showing the money market fund's net asset value per share (which the fund must calculate based on current market factors before applying the amortized cost or penny-rounding method, if used), rounded to the fourth decimal place in the case of funds with a $1.000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.*, $10.00 per share), as of the end of each business day during the preceding six months, which must be updated each business day as of the end of the preceding business day.

(iv) A link to a website of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market fund pursuant to § 270.30b1-7.

(v) For a period of not less than one year, beginning no later than the same business day on which the money market fund files an initial report on Form N-CR (§ 274.222 of this chapter) in response to the occurrence of any event specified in Parts C, E, F, or G of Form N-CR, the same information that the money market fund is required to report to the Commission on Part C (Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7), Part E (Items E.1, E.2, E.3, and E.4), Part F (Items F.1 and F.2), or Part G of Form N-CR concerning such event, along with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

(11) *Processing of transactions.* A government money market fund and a retail money market fund (or its transfer agent) must have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to § 270.22c-1. Such capacity must include the ability to redeem and sell securities at prices that do not correspond to a stable price per share.

(i) *Maturity of portfolio securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (i)(1) through (i)(8) of this section:

(1) *Adjustable rate government securities.* A government security that is a variable rate security where the variable rate of interest is readjusted no less frequently than every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A government security that is a floating rate security shall be deemed to have a remaining maturity of one day.

(2) *Short-term variable rate securities.* A variable rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar

days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-term variable rate securities.* A variable rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-term floating rate securities.* A floating rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day, except for purposes of determining WAL under paragraph (d)(1)(iii) of this section, in which case it shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) *Long-term floating rate securities.* A floating rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio lending agreements.* A portfolio lending agreement shall be treated as

having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money market fund securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the acquired money market fund is required to make payment upon redemption, unless the acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (a)(11)(i) (designation of NRSROs), (c)(1) (board findings), (c)(2)(i) and (ii) (determinations related to liquidity fees and temporary suspensions of redemptions), (f)(2) (defaults and other events), (g)(1) and (g)(2) (amortized cost and penny rounding procedures), and (g)(8) (stress testing procedures) of this section.

(1) *Written Guidelines.* The board of directors must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (d)(2) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a

security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(3) of this section by reference to Form N-CR (§ 274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

7. Section 270.12d3-1(d)(7)(v) is amended by removing "§§ 270.2a-7(a)(8) and 270.2a-7(a)(15)" and adding in its place "§§ 270.2a-7(a)(9) and 270.2a-7(a)(18)".

8. Section 270.18f-3(c)(2)(i) is amended by removing the phrase "that determines net asset value using the amortized cost method permitted by § 270.2a-7" and adding in its place "that operates in compliance with § 270.2a-7".

9. Section § 270.22e-3 is amended by revising paragraph (a)(1) and adding paragraph (d).

The revisions and additions read as follows.

§ 270.22e-3 Exemption for liquidation of money market funds.

(a) * * *

(1) The fund, at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or, in the case of a fund that is a government money market fund, as defined in § 270.2a-7(a)(16) or a retail money market fund, as defined in § 270.2a-7(a)(25), the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur;

* * *

(d) *Definitions*. Each of the terms *business day*, *total assets*, and *weekly liquid assets* has the same meaning as defined in § 270.2a-7.

10. Section 270.30b1-7 is revised to read as follows:

§ 270.30b1-7 Monthly report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a-7 must file with the Commission a monthly report of portfolio holdings on Form N-MFP (§ 274.201 of this chapter), current as of the last business day or any subsequent calendar day of the preceding month, no later than the fifth business day of each month.

11. Section 270.30b1-8 is added to read as follows:

§ 270.30b1-8. Current report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a-7, that experiences any of the events specified on Form N-CR (274.222 of this chapter), must file with the Commission a current report on Form N-CR within the period specified in that form.

12. Section 270.31a-1(b)(1) is amended by removing "§ 270.2a-7(a)(8) or § 270.2a-7(a)(15)" and adding in its place "§ 270.2a-7(a)(9) or § 270.2a-7(a)(18)".

PART 239 — FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

13. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78o-7, 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

*   *   *   *   *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

*   *   *   *   *

15. Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising paragraph 2(b) of the instructions to Item 3;

b. Revising paragraph (b)(1)(ii) of Item 4; and

c. Adding a paragraph (g) to Item 16.

The additions and revisions read as follows:

Note: The text of Form N-1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N-1A

*   *   *   *   *

Item 3. Risk/Return Summary: Fee Table

*   *   *   *   *

Instructions

*   *   *

2. *Shareholder Fees.*

*   *   *

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption, and, if the Fund is a Money Market Fund, does not include a liquidity fee imposed upon the sale of Fund shares in accordance with rule 2a-7(c)(2).

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(b) * * *

(1) * * *

(ii) (A) If the Fund is a Money Market Fund that is not a government Money Market Fund, as defined in § 270.2a-7(a)(16) or a retail Money Market Fund, as defined in § 270.2a-7(a)(25), include the following statement:

> You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a-7(a)(16), or a retail Money Market Fund, as defined in § 270.2a-7(a)(25), and that is subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter (or is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)), include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(C) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a-7(a)(16), that is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)), include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the statement specified in Item 4(b)(1)(ii)(A), Item 4(b)(1)(ii)(B), or Item 4(b)(1)(ii)(C) may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time."). For purposes of this Instruction, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a-9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

*   *   *   *   *

Item 16. Description of the Fund and Its Investments and Risks

*   *   *   *   *

(g) *Money Market Fund Material Events.* If the Fund is a Money Market Fund (except any Money Market Fund that is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, and has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)) disclose, as applicable, the following events:

(1) *Imposition of Liquidity Fees and Temporary Suspensions of Fund Redemptions.*

(i) During the last 10 years, any occasion on which the Fund has invested less than ten percent of its total assets in weekly liquid assets (as provided in § 270.2a-7(c)(2)(ii)), and with respect to each such occasion, whether the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(ii) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i).

(ii) During the last 10 years, any occasion on which the Fund has invested less than thirty percent, but more than ten percent, of its total assets in weekly liquid assets (as provided in § 270.2a-7(c)(2)(i)) and the Fund's board of directors has determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i).

Instructions.

1. With respect to each such occasion, disclose: the dates and length of time for which the

Fund invested less than ten percent (or thirty percent, as applicable) of its total assets in weekly liquid assets; the dates and length of time for which the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(i) or § 270.2a-7(c)(2)(ii), and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i); and the size of any liquidity fee imposed pursuant to § 270.2a-7(c)(2)(i) or § 270.2a-7(c)(2)(ii).

2. The disclosure required by Item 16(g)(1) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items E.1, E.2, E.3, E.4, F.1, F.2, and G.1 of Form N-CR [17 CFR 274.222].

3. The disclosure required by Item 16(g)(1) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

(2) *Financial Support Provided to Money Market Funds.* During the last 10 years, any occasion on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, date support provided, amount of support, security supported (if applicable), and the value of security supported on date support was initiated (if applicable).

Instructions.

1. The term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a-9, purchase of any defaulted or devalued security at par,

execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio; excluding, *however*, any routine waiver of fees or reimbursement of Fund expenses, routine inter-fund lending, routine inter-fund purchases of Fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a "merging investment company"), provide the information required by Item 16(g)(2) with respect to any merging investment company as well as with respect to the Fund; for purposes of this instruction, the term "merger" means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company. If the person or entity that previously provided financial support to a merging investment company is not currently an affiliated person, promoter, or principal underwriter of the Fund, the Fund need not provide the information required by Item 16(g)(2) with respect to that merging investment company.

3. The disclosure required by Item 16(g)(2) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N-CR [17 CFR 274.222].

4. The disclosure required by Item 16(g)(2) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR

Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

16. Form N-MFP (referenced in § 274.201) is revised to read as follows:

Note: The text of Form N-MFP does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-MFP

MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS

OF MONEY MARKET FUNDS

Form N-MFP is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 ("Act") (17 CFR 270.2a-7) ("money market funds"), to file reports with the Commission pursuant to rule 30b1-7 under the Act (17 CFR 270.30b1-7). The Commission may use the information provided on Form N-MFP in its regulatory, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-MFP

Form N-MFP is the public reporting form that is to be used for monthly reports of money market funds required by section 30(b) of the Act and rule 30b1-7 under the Act (17 CFR 270.30b1-7). A money market fund must report information about the fund and its portfolio holdings as of the last business day or any subsequent calendar day of the preceding month. The Form N-MFP must be filed with the Commission no later than the fifth business day of each month, but may be filed any time beginning on the first business day of the month. Each money market fund, or series of a money market fund, is required to file a separate form. If the money market fund does not have any classes, the fund must provide the information required by Part B for the series.

A money market fund may file an amendment to a previously filed Form N-MFP at any time, including an amendment to correct a mistake or error in a previously filed form. A fund that files an amendment to a previously filed form must provide information in response to all items of Form N-MFP, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N-MFP

A money market fund must file Form N-MFP in accordance with rule 232.13 of Regulation S-T. Form N-MFP must be filed electronically using the Commission's EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-MFP unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N-MFP are to the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-MFP have the same meaning as in the Investment Company Act or related rules, unless otherwise indicated.

As used in this Form N-MFP, the terms set out below have the following meanings:

"Cash" means demand deposits in depository institutions and cash holdings in custodial accounts.

"Class" means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a-18(f), 18(g), and 18(i)].

"Fund" means the Registrant or a separate Series of the Registrant. When an item of Form N-MFP specifically applies to a Registrant or a Series, those terms will be used.

"LEI" means, with respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a financial institution, if a "legal entity identifier" has not been assigned, then LEI means the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

"Master-Feeder Fund" means a two-tiered arrangement in which one or more Funds (or registered or unregistered pooled investment vehicles) (each a "Feeder Fund"), holds shares of a single Fund (the "Master Fund") in accordance with section 12(d)(1)(E) [15 U.S.C. 80a-12(d)(1)(E)].

"Money Market Fund" means a Fund that holds itself out as a money market fund and meets the requirements of rule 2a-7 [17 CFR 270.2a-7].

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a - aa].

"Series" means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

"Value" has the meaning defined in section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM N-MFP
MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS
OF MONEY MARKET FUNDS

General Information

Item 1. Report for [mm/dd/yyyy].

Item 2. CIK Number of Registrant.

Item 3. LEI of Registrant (if available) (See General Instructions E.)

Item 4. EDGAR Series Identifier.

Item 5. Total number of share classes in the series.

Item 6. Do you anticipate that this will be the fund's final filing on Form N-MFP? [Y/N] If Yes, answer Items 6.a – 6.c.

a. Is the fund liquidating? [Y/N]

b. Is the fund merging with, or being acquired by, another fund? [Y/N]

c. If applicable, identify the successor fund by CIK, Securities Act file number, and EDGAR series identifier.

Item 7. Has the fund acquired or merged with another fund since the last filing? [Y/N] If Yes, answer Item 7.a.

a. Identify the acquired or merged fund by CIK, Securities Act file number, and EDGAR series identifier.

Item 8. Provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about this Form N-MFP.

Part A: Series-Level Information about the Fund

Item A.1 Securities Act File Number.

Item A.2 Investment Adviser.

a. SEC file number of investment adviser.

Item A.3 Sub-Adviser. If a fund has one or more sub-advisers, disclose the name of each sub-adviser.

a. SEC file number of each sub-adviser.

Item A.4 Independent Public Accountant.

a. City and state of independent public accountant.

Item A.5 Administrator. If a fund has one or more administrators, disclose the name of each administrator.

Item A.6 Transfer Agent.

a. CIK Number.

b. SEC file number of transfer agent.

Item A.7 Master-Feeder Funds. Is this a Feeder Fund? [Y/N] If Yes, answer Items A.7.a – 7.c.

a. Identify the Master Fund by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of the Master Fund.

c. EDGAR series identifier of the Master Fund.

Item A.8 Master-Feeder Funds. Is this a Master Fund? [Y/N] If Yes, answer Items A.8.a – 8.c.

a. Identify all Feeder Funds by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of each Feeder Fund.

c. EDGAR series identifier of each Feeder Fund.

Item A.9 Is this series primarily used to fund insurance company separate accounts? [Y/N]

Item A.10 Category. Indicate the category that identifies the money market fund from among the following: Treasury, Government/Agency, Exempt Government, Prime, Single State, or Other Tax Exempt.

a. Is this fund an exempt retail fund as defined in 270.2a-7(a)(25)[Y/N]?

Item A.11 Dollar-weighted average portfolio maturity ("WAM" as defined in rule 2a-7(d)(1)(ii)).

Item A.12 Dollar-weighted average life maturity ("WAL" as defined in rule 2a-7(d)(1)(iii)). Calculate WAL without reference to the exceptions in rule 2a-7(d) regarding interest rate readjustments.

Item A.13 Liquidity. Provide the following, , as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the daily or weekly liquidity, provide the value as of the close of business on the date in that week last calculated):

a. Total Value of Daily Liquid Assets to the nearest cent:

   i. Friday, week 1:
   ii. Friday, week 2:
   iii. Friday, week 3:
   iv. Friday, week 4:
   v. Friday, week 5 (if applicable):

b. Total Value of Weekly Liquid Assets (including Daily Liquid Assets) to the nearest cent:

   i. Friday, week 1:
   ii. Friday, week 2:
   iii. Friday, week 3:
   iv. Friday, week 4:

v. Friday, week 5 (if applicable):

c. Percentage of Total Assets invested in Daily Liquid Assets:

i. Friday, week 1:

ii. Friday, week 2:

iii. Friday, week 3:

iv. Friday, week 4:

v. Friday, week 5 (if applicable):

d. Percentage of Total Assets invested in Weekly Liquid Assets (including Daily Liquid Assets):

i. Friday, week 1:

ii. Friday, week 2:

iii. Friday, week 3:

iv. Friday, week 4:

v. Friday, week 5 (if applicable):

Item A.14 Provide the following, to the nearest cent:

a. Cash. (See General Instructions E.)

b. Total Value of portfolio securities. (See General Instructions E.)

i. If any portfolio securities are valued using amortized cost, the total value of the portfolio securities valued at amortized cost.

c. Total Value of other assets (excluding amounts provided in A.14.a–c.)

Item A.15 Total value of liabilities, to the nearest cent.

Item A.16 Net assets of the series, to the nearest cent.

Item A.17 Number of shares outstanding, to the nearest hundredth.

Item A.18 If the fund seeks to maintain a stable price per share, state the price the fund seeks to maintain.

Item A.19 7-day gross yield. Based on the 7 days ended on the last day of the prior month, calculate the fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.

Item A.20 Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a $1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):

a. Friday, week 1:

b. Friday, week 2:

c. Friday, week 3:

d. Friday, week 4:

e. Friday, week 5 (if applicable):

Part B: Class-Level Information about the Fund

For each Class of the Series (regardless of the number of shares outstanding in the Class), disclose the following:

Item B.1 EDGAR Class identifier.

Item B.2 Minimum initial investment.

Item B.3 Net assets of the Class, to the nearest cent.

Item B.4 Number of shares outstanding, to the nearest hundredth.

Item B.5 Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions), rounded to the fourth decimal place in the case of a fund with a $1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):

a. Friday, week 1:

b. Friday, week 2:

c. Friday, week 3:

d. Friday, week 4:

Friday, week 5 (if applicable):

Item B.6 Net shareholder flow. Provide the aggregate weekly gross subscriptions (including dividend reinvestments) and gross redemptions, rounded to the nearest cent, as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the gross subscriptions or gross redemptions, provide the value as of the close of business on the date in that week last calculated):

a. Friday, week 1:

    i. Weekly gross subscriptions (including dividend reinvestments):

    ii. Weekly gross redemptions:

b. Friday, week 2:

    i. Weekly gross subscriptions (including dividend reinvestments):

    ii. Weekly gross redemptions:

c. Friday, week 3:

i. Weekly gross subscriptions (including dividend reinvestments):

ii. Weekly gross redemptions:

d. Friday, week 4:

i. Weekly gross subscriptions (including dividend reinvestments):

ii. Weekly gross redemptions:

e. Friday, week 5 (if applicable):

i. Weekly gross subscriptions (including dividend reinvestments):

ii. Weekly gross redemptions:

f. Total for the month reported:

i. Monthly gross subscriptions (including dividend reinvestments):

ii. Monthly gross redemptions:

Item B.7 7-day net yield, as calculated under Item 26(a)(1) of Form N-1A (§ 274.11A of this chapter).

Item B.8 During the reporting period, did any Person pay for, or waive all or part of the fund's operating expenses or management fees? [Y/N] If Yes, answer Item B.8.a.

a. Provide the name of the Person and describe the nature and amount of the expense payment or fee waiver, or both (reported in dollars).

Part C: Schedule of Portfolio Securities For each security held by the money market fund, disclose the following:

Item C.1 The name of the issuer.

Item C.2 The title of the issue (including coupon, if applicable).

Item C.3 The CUSIP.

Item C.4 The LEI (if available). (See General Instruction E.)

Item C.5 Other identifier. In addition to CUSIP and LEI, provide at least one of the following other identifiers, if available:

a. The ISIN;

b. The CIK; or

c. Other unique identifier.

Item C.6 The category of investment. Indicate the category that most closely identifies the instrument from among the following:

U.S. Treasury Debt; U.S. Government Agency Debt; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S.

Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; or Tender Option Bond. If Other Instrument, include a brief description.

Item C.7 If the security is a repurchase agreement, is the fund treating the acquisition of the repurchase agreement as the acquisition of the underlying securities (*i.e.*, collateral) for purposes of portfolio diversification under rule 2a-7? [Y/N]

Item C.8 For all repurchase agreements, specify whether the repurchase agreement is "open" (*i.e.*, the repurchase agreement has no specified end date and, by its terms, will be extended or "rolled" each business day (or at another specified period) unless the investor chooses to terminate it), and describe the securities subject to the repurchase agreement (*i.e.*, collateral).

a. Is the repurchase agreement "open"? [Y/N]

b. The name of the collateral issuer.

c. LEI (if available).

d. Maturity date.

e. Coupon or yield.

f. The principal amount, to the nearest cent.

g. Value of collateral, to the nearest cent.

h. The category of investments that most closely represents the collateral, selected from among the following:

Asset-Backed Securities; Agency Collateralized Mortgage Obligations; Agency Debentures and Agency Strips; Agency Mortgage-Backed Securities; Private Label Collateralized Mortgage Obligations; Corporate Debt Securities; Equities; Money Market; U.S. Treasuries (including strips); Other Instrument. If Other Instrument, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

If multiple securities of an issuer are subject to the repurchase agreement, the securities may be aggregated, in which case disclose: (a) the total principal amount and value and (b) the range of maturity dates and interest rates.

Item C.9 Rating. Indicate whether the security is a rated First Tier Security, rated Second Tier Security, an Unrated Security, or no longer an Eligible Security.

Item C.10 Name of each Designated NRSRO.

a. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If the instrument and its issuer are not rated by the Designated NRSRO, indicate "NR."

Item C.11 The maturity date determined by taking into account the maturity shortening provisions of rule 2a-7(i) (*i.e.*, the maturity date used to calculate WAM under rule 2a-7(d)(1)(ii)).

Item C.12 The maturity date determined without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments (*i.e.*, the maturity date used to calculate WAL under rule 2a-7(d)(1)(iii)).

Item C.13 The maturity date determined without reference to the maturity shortening provisions of rule 2a-7(i) (*i.e.*, the ultimate legal maturity date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid).

Item C.14 Does the security have a Demand Feature on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.14.a – 14.f. Where applicable, provide the information required in Items C.14b – 14.f in the order that each Demand Feature issuer was reported in Item C.14.a.

a. The identity of the Demand Feature issuer(s).
b. Designated NRSRO(s) for the Demand Feature(s) or provider(s) of the Demand Feature(s).
c. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate "NR."

d. The amount (*i.e.*, percentage) of fractional support provided by each Demand Feature issuer.

e. The period remaining until the principal amount of the security may be recovered through the Demand Feature.

f. Is the demand feature conditional? [Y/N]

Item C.15 Does the security have a Guarantee (other than an unconditional letter of credit disclosed in item C.14 above) on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.15.a – 15.d. Where applicable, provide the information required in Item C.15.b – 15.d in the order that each Guarantor was reported in Item C.15.a.

a. The identity of the Guarantor(s).

b. Designated NRSRO(s) for the Guarantee(s) or Guarantor(s).

c. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate "NR."

d. The amount (*i.e.*, percentage) of fractional support provided by each Guarantor.

Item C.16 Does the security have any enhancements, other than those identified in Items C.14 and C.15 above, on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.16.a – 16.e. Where applicable, provide the information required in Items C.16.b – 16.e in the order that each enhancement provider was reported in Item C.16.a.

a. The identity of the enhancement provider(s).

b. The type of enhancement(s).

c. Designated NRSRO(s) for the enhancement(s) or enhancement provider(s).

d. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate "NR."

e. The amount (*i.e.*, percentage) of fractional support provided by each enhancement provider.

Item C.17 The yield of the security as of the reporting date.

Item C.18 The total Value of the fund's position in the security, to the nearest cent: (See General Instruction E.)

a. *Including* the value of any sponsor support:

b. *Excluding* the value of any sponsor support:

Item C.19 The percentage of the money market fund's net assets invested in the security, to the nearest hundredth of a percent.

Item C.20 Is the security categorized at level 3 in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (ASC 820, Fair Value Measurement) [Y/N]?

Item C.21 Is the security a Daily Liquid Asset? [Y/N]

Item C.22 Is the security a Weekly Liquid Asset? [Y/N]

Item C.23 Is the security an Illiquid Security? [Y/N]

Item C.24 Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. If none, leave blank.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

____
(Registrant)

Date ______________________________

____
(Signature)*

*Print name and title of the signing officer under his/her signature.

17. Section 274.222 and Form N-CR are added to read as follows:

§ 274.222 Form N-CR, Current report of money market fund material events

This form shall be used by registered investment companies that are regulated as money market funds under § 270.2a-7 of this chapter to file current reports pursuant to § 270.30b1-8 of this chapter within the time periods specified in the form.

Note: The text of Form N-CR will not appear in the Code of Federal Regulations.

FORM N-CR
CURRENT REPORT
MONEY MARKET FUND MATERIAL EVENTS

Form N-CR is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 ("Investment Company Act") (17 CFR 270.2a-7) ("money market funds"), to file current reports with the Commission pursuant to rule 30b1-8 under the Investment Company Act (17 CFR 270.30b1-8). The Commission may use the information provided on Form N-CR in its regulatory, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CR

Form N-CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1-8 under the Act. A money market fund must file a report on Form N-CR upon the occurrence of any one or more of the events specified in Parts B – H of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event, and will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Information to Be Included in Report Filed on Form N-CR

Upon the occurrence of any one or more of the events specified in Parts B – H of Form N-CR, a money market fund must file a report on Form N-CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B – H of the form.

D. Filing of Form N-CR

A money market fund must file Form N-CR in accordance with rule 232.13 of Regulation S-T. Form N-CR must be filed electronically using the Commission's EDGAR system.

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-CR unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N-CR are to the Investment Company Act (15 U.S.C 80a), unless otherwise indicated. Terms used in this Form N-CR have the same meaning as in the Investment Company Act or rule 2a-7 under the Investment Company Act, unless otherwise indicated. In addition, as used in this Form N-CR, the term "fund" means the registrant or a separate series of the registrant.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM N-CR
CURRENT REPORT
MONEY MARKET FUND MATERIAL EVENTS

Part A: General information

Item A.1 Report for [mm/dd/yyyy].

Item A.2 CIK Number of registrant.

Item A.3 EDGAR Series Identifier.

Item A.4 Securities Act File Number.

Item A.5 Provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about this Form N-CR.

Part B: Default or event of insolvency of portfolio security issuer

If the issuer of one or more of the fund's portfolio securities, or the issuer of a demand feature or guarantee to which one of the fund's portfolio securities is subject, and on which the fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or event of insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the demand feature or guarantee) accounted for at least ½ of 1 percent of the fund's total assets immediately before the default or event of insolvency, disclose the following information:

Item B.1 Security or securities affected. Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).

Item B.2 Date(s) on which the default(s) or Event(s) of Insolvency occurred.

Item B.3 Value of affected security or securities on the date(s) on which the default(s) or event(s) of insolvency occurred.

Item B.4 Percentage of the fund's total assets represented by the affected security or securities.

Item B.5 Brief description of actions fund plans to take, or has taken, in response to the default(s) or event(s) of insolvency.

Instruction. For purposes of Part B, an instrument subject to a demand feature or guarantee will not be deemed to be in default (and an event of insolvency with respect to the security will not be deemed to have occurred) if: (i) in the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a guarantee with respect to an asset-backed security pursuant to rule 2a-7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

A report responding to Items B.1 through B.4 is to be filed within one business day after occurrence of an event contemplated in this Part B. An amended report responding to Item B.5 is to be filed within four business days after occurrence of an event contemplated in this Part B.

Part C: Provision of financial support to fund

If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, provides any form of financial support to the fund (including any (i) capital contribution, (ii) purchase of a security from the fund in reliance on § 270.17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) execution of letter of credit or letter of indemnity, (v) capital support agreement (whether or not the fund ultimately received support), (vi) performance guarantee, or (vii) any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; excluding, *however*, any (i) routine waiver of fees or reimbursement of fund expenses, (ii) routine inter-fund lending (iii) routine inter-fund purchases of fund shares, or (iv) any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio), disclose the following information:

Item C.1 Description of nature of support.

Item C.2 Person providing support.

Item C.3 Brief description of relationship between the person providing support and the fund.

Item C.4 Date support provided.

Item C.5 Amount of support.

Item C.6 Security supported (if applicable). Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).

Item C.7 Value of security supported on date support was initiated (if applicable).

Item C.8 Brief description of reason for support.

Item C.9 Term of support.

Item C.10 Brief description of any contractual restrictions relating to support.

Instruction. If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, purchases a security from the fund in reliance on § 270.17a-9, the fund must provide the purchase price of the security in responding to Item C.6.

A report responding to Items C.1 through C.7 is to be filed within one business day after occurrence of an event contemplated in this Part C. An amended report responding to Items C.8 through C.10 is to be filed within four business days after occurrence of an event contemplated in this Part C.

Part D: Deviation between current net asset value per share and intended stable price per share

If a retail money market fund's or a government money market fund's current net asset value per share (rounded to the fourth decimal place in the case of a fund with a $1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than ¼ of 1 percent, disclose:

Item D.1 Date(s) on which such downward deviation exceeded ¼ of 1 percent.

Item D.2 Extent of deviation between the fund's current net asset value per share and its intended stable price per share.

Item D.3 Principal reason or reasons for the deviation, including the name of any security whose value calculated using available market quotations (or an appropriate substitute that reflects current market conditions) or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event), has contributed to the deviation. For any such security, disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).

Instruction. A report responding to Items D.1 and D.2 is to be filed within one business day after occurrence of an event contemplated in this Part D. An amended report responding to Items D.3 is to be filed within four business days after occurrence of an event contemplated in this Part D.

Part E: Imposition of liquidity fee

If a fund (except a government money market fund that is relying on the exemption in rule 2a-7(c)(2)(iii)): (i) at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or (ii) has invested less than thirty percent of its total assets in weekly liquid assets and imposes a liquidity fee pursuant to rule 2a-7(c)(2)(i) or (ii), disclose the following information:

Item E.1 Initial date on which the fund invested less than ten percent of its total assets in weekly liquid assets, if applicable.

Item E.2 If the fund imposes a liquidity fee pursuant to rule 2a-7(c)(2), date on which the fund instituted the liquidity fee.

Item E.3 Percentage of the fund's total assets invested in weekly liquid assets as of the dates reported in items E.1 and E.2, as applicable.

Item E.4 Size of the liquidity fee, if any.

Item E.5 Brief description of the facts and circumstances leading to the fund's investing in the amount of weekly liquid assets reported in Item E.3.

Item E.6 Brief discussion of the primary considerations or factors taken in account by the board of directors in its decision to impose (or not impose) a liquidity fee.

Instruction. A report responding to Items E.1 though E.4 is to be filed within one business day after occurrence of an event contemplated in this Part E. An amended report responding to Items E.5 and E.6 is to be filed within four business days after occurrence of an event contemplated in this Part E.

Part F: Suspension of fund redemptions

If a fund suspends redemptions pursuant to rule 2a-7(c)(2)(i), disclose the following information:

Item F.1 Percentage of the fund's total assets invested in weekly liquid assets as of the date on which the fund suspended redemptions.

Item F.2 Date on which the fund initially suspended redemptions.

Item F.3 Brief description of the facts and circumstances leading to the fund's investing in the amount of weekly liquid assets stated in Item F.1.

Item F.4 Brief discussion of the primary considerations or factors taken in account by the board of directors in its decision to suspend the fund's redemptions.

Instruction. A report responding to Items F.1 and F.2 is to be filed within one business day after occurrence of an event contemplated in this Part F. An amended report responding to Items F.3 and F.4 is to be filed within four business days after occurrence of an event contemplated in this Part F.

Part G: Removal of liquidity fees and/or resumption of fund redemptions

If a fund that has imposed a liquidity fee and/or suspended the fund's redemptions pursuant to rule 2a-7(c)(2) determines to remove such fee and/or resume fund redemptions, disclose the following, as applicable:

Item G.1 Date on which the fund removed the liquidity fee and/or resumed fund redemptions.

Part H: Optional disclosure

If a fund chooses, at its option, to disclose any other events or information not otherwise required by this form, it may do so under this Item H.1.

Item H.1 Optional disclosure.

Instruction. Item H.1 is intended to provide a fund with additional flexibility, if it so chooses, to disclose any other events or information not otherwise required by this form, or to supplement or clarify any of the disclosures required elsewhere in this form. Part H does not impose on funds any affirmative obligation. A fund may file a report on Form N-CR responding to Part H at any time.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

____
(Registrant)

Date __________________________

____
(Signature)*

*Print name and title of the signing officer under his/her signature.

PART 279 – FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

18. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq*.

19. Form PF (referenced in § 279.9) is amended by:

a. In General Instruction 15, removing the reference to Question 57 from the last bulleted sentence;

b. Revising section 3;

c. In the Glossary of Terms, adding and revising certain terms.

The additions and revisions read as follows:

Note: The text of Form PF does not, and this amendment will not, appear in the Code of Federal Regulations.

Form PF

* * * * *

Section 3

Section 3: Information about *liquidity funds* that you advise.

You must complete a separate Section 3 for each *liquidity fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures*, you may report collectively or separately about the component funds as provided in the General Instructions.

Item A. *Reporting fund* identifying and operational information

51. (a) Name of the *reporting fund* .... ☐
    (b) *Private fund* identification number of the *reporting fund*............ ☐

52. Does the *reporting fund* use the amortized cost method of valuation in computing its *net asset value*?
    ☐ Yes ☐ No

53. Does the *reporting fund* use the penny rounding method of pricing in computing its *net asset value*?
    ☐ Yes ☐ No

54. (a) Does the *reporting fund* have a policy of complying with the *risk limiting conditions* of *rule 2a-7*?
    ☐ Yes ☐ No

    (b) If you responded "no" to Question 54(a) above, does the *reporting fund* have a policy of complying with the following provisions of *rule 2a-7*:
    (i) the diversification conditions? ☐ Yes ☐ No
    (ii) the credit quality conditions? ☐ Yes ☐ No
    (iii) the liquidity conditions? ☐ Yes ☐ No
    (iv) the maturity conditions? ☐ Yes ☐ No

Item B. *Reporting fund* assets

55. Provide the following information for each month of the *reporting period.*

	1st Month	2nd Month	3rd Month
(a) Net asset value of *reporting fund* as reported to current and prospective investors			
(b) Net asset value per share of *reporting fund* as reported to current and prospective investors *(to the nearest hundredth of a cent)*			
(c) Net asset value per share of *reporting fund (to the nearest hundredth of a cent; exclude the value of any capital support agreement or similar arrangement).*			
(d) *WAM* of *reporting fund (in days)*			
(e) *WAL* of *reporting fund (in days)*			
(f) *7-day gross yield* of *reporting fund (to the nearest hundredth of one percent)*			
(g) Dollar amount of the *reporting fund's* assets that are *daily liquid assets*			
(h) Dollar amount of the *reporting fund's* assets that are *weekly liquid assets*			
(i) Dollar amount of the *reporting fund's* assets that have a *maturity* greater than 397 days			

Item C. Financing information

56. (a) Is the amount of total *borrowing* reported in response to Question 12 equal to or greater than 5% of the *reporting fund's net asset value*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 56(a) above, divide the dollar amount of total *borrowing* reported in response to Question 12 among the periods specified below depending on the type of *borrowing*, the type of creditor and the latest date on which the reporting fund may repay the principal amount of the *borrowing* without defaulting or incurring penalties or additional fees.

(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the borrowing *should be deemed to have a maturity of 1 day or less for purposes of this question. For amortizing loans, each amortization payment should be treated separately and grouped with other* borrowings *based on its payment date.)*

(The total amount of borrowings *reported below should equal approximately the total amount of* borrowing *reported in response to Question 12.)*

	1 day or less	2 days to 7 days	8 days to 30 days	31 days to 397 days	Greater than 397 days
(i) *Unsecured borrowing*					
(A) *U.S. financial institutions*					
(B) *Non-U.S. financial institutions*					
(C) Other U.S. creditors					
(D) Other non-U.S. creditors					
(ii) *Secured borrowing*					
(A) *U.S. financial institutions*					
(B) *Non-U.S. financial institutions*					
(C) Other U.S. creditors					
(D) Other non-U.S. creditors					

57. (a) Does the *reporting fund* have in place one or more committed liquidity facilities?

☐ Yes ☐ No

(b) If you responded "yes" to Question 57(a), provide the aggregate dollar amount of commitments under the liquidity facilities ....

Item D. Investor information

58. Specify the number of outstanding shares or units of the *reporting fund's* stock or similar securities ....

59. Provide the following information regarding investor concentration.

(For purposes of this question, if you know that two or more beneficial owners of the reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner.)*

(a) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the beneficial owner having the largest equity interest in the *reporting fund* ....

(b) How many investors beneficially own 5% or more of the *reporting fund's* equity?

60. Provide a good faith estimate, as of the *data reporting date*, of the percentage of the *reporting fund's* outstanding equity that was purchased using *securities*

lending collateral .... | |

61. Provide the following information regarding the restrictions on withdrawals and redemptions by investors in the *reporting fund.*

(For Questions 61 and 62, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a) May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective)*	
(b) May be subjected to material restrictions on investor withdrawals/ redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to impose a restriction and not just whether a restriction has been imposed)*	
(c) Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend)*	
(d) Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction)*	

62. Investor liquidity (as a % of *net asset value*):

(Divide the reporting fund's net asset value *among the periods specified below depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the notice period before the valuation date rather than the date proceeds would be paid to investors. The total should add up to 100%.)*

	% of *NAV* locked for
(i) 1 day or less	
(ii) 2 days – 7 days	
(iii) 8 days – 30 days	
(iv) 31 days – 90 days	
(v) 91 days – 180 days	
(vi) 181 days – 365 days	
(vii) Longer than 365 days	

Item E. Portfolio Information

63. For each security held by the *reporting fund*, provide the following information for each month of the *reporting period*.

    (a) Name of the issuer ....

    (b) Title of the issue (including coupon, if applicable) ....

    (c) CUSIP. ....

    (d) *LEI*, if available ....

    (e) In addition to CUSIP and *LEI*, provide at least one of the following other identifiers, if available:

        (i) ISIN ....

        (ii) CIK ....

        (iii) Other unique identifier ....

    (f) The category of investment that most closely identifies the instrument.......

        (Select from among the following categories of investment: U.S. Treasury Debt; U.S. Government Agency Debt; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; Non-Financial Company Commercial Paper; or Tender Option Bond. If Other Instrument, include a brief description.)

    (g) For repos, specify whether the repo is "open" (*i.e.*, the repo has no specified end date and, by its terms, will be extended or "rolled" each business day (or at another specified period) unless the investor chooses to terminate it), and provide the following information about the securities subject to the repo (*i.e.*, the collateral):

        (If multiple securities of an issuer are subject to the repo, the securities may be aggregated, in which case provide: (i) the total principal amount and value and (ii) the range of maturity dates and interest rates.)

        (i) Whether the repo is "open" ....

        (ii) Name of the collateral issuer ....

        (iii) CUSIP ....

(iv) *LEI*, if available ....

(v) Maturity date..

(vi) Coupon or yield ....

(vii) The principal amount, to the nearest cent ....

(viii) Value of the collateral, to the nearest cent.............................

(ix) The category of investment that most closely represents the collateral ....

(Select from among the following categories of investment: Asset-Backed Securities; Agency Collateralized Mortgage Obligations; Agency Debentures and Agency Strips; Agency Mortgage-Backed Securities; Private Label Collateralized Mortgage Obligations; Corporate Debt Securities; Equities; Money Market; U.S. Treasuries (including strips); Other Instrument. If Other Instrument, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt).

(h) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the security, provide the name of each *credit rating agency* and the rating each assigned to the security.

(i) The maturity date used to calculate *WAM* ....

(j) The maturity date used to calculate *WAL* ....

(k) The ultimate legal maturity date (*i.e.*, the date on which, in accordance with the terms of the security without regard to any interest rate readjustment or *demand feature*, the principal amount must unconditionally be paid) ....

(l) If the security has a *demand feature* on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such a demand feature, *enter "NA.")*

(i) Identity of the *demand feature* issuer(s) ....

(ii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *demand feature*, its issuer, or the security to which it relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency*..

(iii) The period remaining until the principal amount of the security may be recovered through the *demand feature* ......

(iv) The amount (*i.e.*, percentage) of fractional support provided by each *demand feature* issuer..

(v) Whether the *demand feature* is a *conditional demand feature* ....

(m) If the security has a *guarantee* (other than an unconditional letter of credit reported in response to Question 63(l) above) on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such a guarantee, *enter NA.")*

(i) Identity of the *guarantor(s)* ....

(ii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *guarantee*, the *guarantor*, or the security to which the *guarantee* relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency* ....

(iii) The amount (*i.e.*, percentage) of fractional support provided by each *guarantor* ....

(n) If the security has any enhancements, other than those identified in response to Questions 63(l) and (m) above, on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such an enhancement, enter "NA.")

(i) Identity of the enhancement provider(s) ....

(ii) The type of enhancement(s) ....

(iii) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the enhancement, its provider, or the security to which it relates, provide the name of each *credit rating agency* used and the rating assigned by the credit rating agency..........

(iv) The amount (*i.e.*, percentage) of fractional support provided by each enhancement provider ....

(o) The yield of the security as of the reporting date:..........

(p) The total *value* of the *reporting fund's* position in the security, and separately, if the *reporting fund* uses the amortized cost method of valuation, the amortized cost value, in both cases to the nearest cent:

(i) Including the value of any sponsor support..........

(ii) Excluding the value of any sponsor support..........

(q) The percentage of the *reporting fund's* net assets invested in the security, to the nearest hundredth of a percent..........

(r) Is the security categorized as a level 3 asset or liability in Question 14?

(s) Is the security a *daily liquid asset*?

(t) Is the security a *weekly liquid asset*?

(u) Is the security an *illiquid security*?

(v) Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security.
(If none, leave blank.)

Item F. Parallel Money Market Funds

64. If the *reporting fund* pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a *money market fund* advised by you or any of your *related persons*, provide the *money market fund's* EDGAR series identifier ....
(If neither you nor any of your related persons *advise such a* money market fund, *enter "NA.")*

* * * * *

GLOSSARY OF TERMS

* * *

Conditional demand feature Has the meaning provided in *rule 2a-7*.

* * *

Credit rating agency Any nationally recognized statistical rating organizations, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

* * *

Demand feature Has the meaning provided in *rule 2a-7*.

* * *

Guarantee For purposes of Question 63, has the meaning provided in paragraph (a)(16)(i) of *rule 2a-7*.

Guarantor For purposes of Question 63, the provider of any *guarantee*.

*　　*　　*

Illiquid security Has the meaning provided in *rule 2a-7*.

*　　*　　*

Maturity The maturity of the relevant asset, determined without reference to the maturity shortening provisions contained in paragraph (i) of *rule 2a-7* regarding interest rate readjustments.

*　　*　　*

Risk limiting conditions The conditions specified in paragraph (d) of *rule 2a-7*.

*　　*　　*

WAL Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a-7*, but determined without reference to the exceptions in paragraph (i) of *rule 2a-7* regarding interest rate readjustments.

WAM Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a-7*

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Date: July 23, 2014

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9617 / July 24, 2014

Administrative Proceeding
File No. 3-15982

In the Matter of **MORGAN STANLEY AND CO. LLC; MORGAN STANLEY ABS CAPITAL I INC.; and MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") against Morgan Stanley and Co. LLC (f/k/a Morgan Stanley and Co. Incorporated) ("MS & Co."), Morgan Stanley ABS Capital I Inc. ("MSAC"), and Morgan Stanley Mortgage Capital Holdings LLC ("MSMCH") (collectively "Respondents" or "Morgan Stanley").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

This matter concerns Morgan Stanley's misleading public disclosures regarding the number of delinquent loans in two subprime residential mortgage-backed securities ("RMBS") transactions offered in 2007—Morgan Stanley ABS Capital I Inc. Trust 2007-NC4 ("NC4") and Morgan Stanley ABS Capital I Inc. Trust 2007-HE7 ("HE7") (collectively "the transactions"). Morgan Stanley sponsored, issued, and underwrote the transactions, which were collateralized by mortgage loans with an aggregate principal value balance of over $2.5 billion.

Morgan Stanley acquired most of the loans collateralizing the transactions through public auctions of loans originated by New Century Mortgage Corporation and its affiliates ("New Century"), after it filed for bankruptcy in April 2007. In connection with the transactions, Morgan Stanley made certain representations and warranties concerning the mortgage loans backing the transactions, including those concerning delinquent loans.

The transactions, which were the last subprime RMBS Morgan Stanley sponsored, issued, and underwrote, came against a backdrop of rising borrower delinquencies and unprecedented distress in the subprime market. In the midst of these adverse market conditions, Morgan Stanley misrepresented in the offering documents the current or historical delinquency status of certain loans collateralizing the transactions.

The offering documents for the transactions disclosed that less than 1% of each pool's aggregate principal balance was more than 30 but less than 60 days delinquent as of each transaction's "cut-off date" (the "current delinquency representation"). With the exception of these loans disclosed as currently delinquent, Morgan Stanley represented that, as of each transaction's "closing date," no payment under any other loan had been more than 30 days delinquent at any time since origination (the "historical delinquency representation").

Notwithstanding the historical delinquency representation, approximately 17% of the loans collateralizing the HE7 transaction had been delinquent at some point since origination Further, although Morgan Stanley represented that the number and percentage of currently delinquent loans included in the HE7 offering materials was as of the transaction's September 1, 2007 cut-off date, Morgan Stanley actually used payment data as of mid-September to determine the disclosed delinquencies. By using the later payment data, Morgan Stanley misreported the number of current delinquencies by 46 loans.

The NC4 transaction had a May 1 cut-off date but did not close until June 20, 2007. As a result, on at least one occasion prior to closing, Morgan Stanley received updated remittance data (that is, information about payments made by homeowners) showing at least 4.5% of the

[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

aggregate principal balance of the NC4 transaction had become either 30 to 59 days delinquent ("30 days delinquent") or 60 to 89 days delinquent ("60 days delinquent").

Information about current and historical delinquent loans was information that investors would have considered important in deciding whether to invest in the NC4 and HE7 transactions. Morgan Stanley knew or should have known that the disclosures concerning current and historical delinquencies were materially inaccurate and would mislead purchasers in the NC4 and HE7 securities offerings.

As a result of this conduct, the HE7 trust contains loans that have actual and projected losses, based on bankruptcies, real estate owned properties ("REOs"), and foreclosures, of $138,255,564, while the NC4 trust contains loans that have actual and projected losses, based on bankruptcies, REO's and foreclosures, of $21,230,863. Investors in these transactions have incurred losses.

Respondents

1. **Morgan Stanley and Co. LLC** (f/k/a Morgan Stanley and Co. Incorporated) ("MS & Co.") is a Delaware limited liability company with its principal executive offices in New York, New York. MS & Co. is a registered broker-dealer under the Securities Exchange Act of 1934. MS & Co. served as the underwriter for the NC4 and HE7 transactions. In that capacity, MS & Co. acquired the securities issued by the RMBS trusts and sold them to investors. The individuals who acted for the depositor and sponsor in these transactions also were employees of MS & Co.

2. **Morgan Stanley ABS Capital I Inc.** ("MSAC") is a Delaware corporation with its principal place of business in New York, New York. MSAC was the depositor for the NC4 and HE7 transactions. As the depositor, MSAC was the registrant and issuer for the transactions. The Prospectus Supplements for these transactions became part of a registration statement for RMBS offerings that MSAC previously had filed with the Commission. MSAC is an affiliate, through common parent ownership, of both MS & Co. and the sponsor, Morgan Stanley Mortgage Capital Holdings LLC.

3. **Morgan Stanley Mortgage Capital Holdings LLC** ("MSMCH") is a New York limited liability company with its principal place of business in New York, New York. MSMCH was the sponsor of the transactions. MSMCH is an affiliate, through common parent ownership of MS & Co., the underwriter, and MSAC, the depositor.

The Securitization Process

4. Morgan Stanley structured and sold the NC4 and HE7 transactions through the sponsor, depositor and underwriter entities described above. On or about June 20, 2007, MSAC transferred 5,340 loans to the issuing entity Morgan Stanley ABS Capital I Inc. Trust 2007-NC4. On or about September 28, MSAC transferred approximately 7,670 loans to the issuing trust for Morgan Stanley ABS Capital I Inc. Trust 2007-HE7. In both instances, MSAC transferred the loans to the trusts in exchange for certificates representing the RMBS investments. MSAC sold

the certificates to MS & Co., the underwriter, which sold them to the public. MS & Co. obtained money through its sales of securities to the public and received underwriting fees in connection with the transactions.

5. The transactions were created by a team within Morgan Stanley's Global Proprietary Credit Group (the "Finance Group"). The Finance Group provided the Collateral Analysis group ("Collateral Analysis"), a business unit providing analytical support, with specific criteria for selecting a loan pool to securitize from Morgan Stanley's inventory of mortgage loans. Collateral Analysis then prepared and circulated statistical reports called "stratifications" to the Finance Group and others. Often, the stratifications contained aggregated loan statistics including a table reflecting the most recent monthly payment a borrower had made, commonly referred to as "paid thru" data. The selection of the loan pool was an iterative process as certain categories of loans were switched in and out at the direction of the Finance Group.

6. At all relevant times to the NC4 and HE7 transactions, Regulation AB required disclosure of the criteria used to purchase the pool assets, including any changes to such criteria, and disclosure of the cut-off date for establishing the composition of the asset pool. These requirements were specified in Items 1111(a)(3) and 1111(a)(5) of Regulation AB [17 C.F.R. §§ 229.1111(a)(3), 1111(a)(5)]. Although the offering documents for the transactions stated the number of delinquent loans as of the cut-off date, Collateral Analysis received updated remittance data between the cut-off and closing dates, which the Finance Group used to finalize the loan pool.

7. When composing a loan pool for a MSAC securitization, Morgan Stanley had a longstanding practice limiting the number of loans that were 30 to 59 days delinquent to less than 1% of the loan pool's aggregate principal balance. Further, under the practice, loans that were more than 60 days delinquent would not be securitized. Morgan Stanley communicated this practice to other market participants, including ratings agencies.

8. Morgan Stanley made statements to the public in the offer and sale of the transactions in the following documents filed with the Commission (the "offering documents"):

a. <u>The Registration Statement.</u> MSAC signed and filed with the Commission a Form S-3 registration statement for the MSAC series of RMBS. The Form S-3 contained, among other things, a form Prospectus describing the securities to be issued under the registration statement and a Form Pooling and Servicing Agreement ("PSA").

b. <u>The Prospectus Supplement and Prospectus.</u> MSAC filed a Prospectus Supplement and Prospectus for each transaction that contained specific information related to each trust and described, among other things, the structure of the bonds being offered, and the characteristics of the loans backing the notes. MSAC filed preliminary and final Prospectus Supplements for the transactions. The Prospectus Supplements were not separately signed, but the final Prospectus Supplements became a part of the previously signed and filed Forms S-3.

c. <u>The PSA.</u> MSAC filed Forms 8-K with the PSAs attached as an exhibit. The PSAs set forth, among other things, the roles, responsibilities, rights, and obligations of the sponsor, depositor, servicer, and other parties to the transactions. The PSAs also conveyed the loans to the trusts and set forth representations and warranties of the sponsor regarding the loans.

9. MSAC, MSMCH, and MS & Co. were all involved in the securitization process for the NC4 and HE7 transactions. MSAC signed the PSAs and filed them with the Forms 8-K. MS & Co. and MSMCH appeared on the securitization documents as the underwriter and sponsor respectively, and MS & Co.'s employees were officers and directors of the depositor and sponsor.

<u>Current and Historical Delinquency Representations</u>

10. At all relevant times to the NC4 and HE7 transactions, Regulation AB required disclosure of delinquency information related to assets that provided collateral for an asset-backed securities offering. The regulations required disclosures of the method of determining delinquencies, the total amount of delinquent assets as a percentage of the aggregate pool, and other material information concerning delinquent assets. These requirements were specified in, among other provisions, Items 1100(b) and 1111(c) of Regulation AB [17 C.F.R. §§ 229.1100(b),1111(c)].

11. Morgan Stanley made the same disclosures and representations about current and historical mortgage loan delinquencies in the NC4 and HE7 transactions. Each Prospectus Supplement disclosed (1) the number of loans that were more than 30 but less than 60 days delinquent as of the cut-off date; (2) the aggregate principal balance of these delinquent loans; and (3) the percentage of each transaction's aggregate principal balance the delinquent loans represented as of the respective cut-off date.

12. Further, each Prospectus Supplement summarized the representations that MSMCH, as sponsor, would make in the PSAs, as of each transaction's closing date. MSMCH represented that, as of the closing date, except for the mortgage loans it disclosed as delinquent as of each transaction's cut-off date, no payment was then more than 30 days Delinquent nor had any payment under the mortgage loan "been more than 30 days Delinquent at any time since the origination of the mortgage loan."

13. Each Prospectus Supplement included the following definition:

> "Delinquent," with respect to any mortgage loan, means any monthly payment due on a due date that is not made by the close of business on the next scheduled due date for that mortgage loan.

This definition describes the Office of Thrift Supervision method for determining a loan's delinquency status. Almost all the loans in the NC4 and HE7 transactions had payment due dates on the first of the month.

14. By the time the NC4 and HE7 transactions were issued, the RMBS market was

experiencing unprecedented delinquencies. In the offering documents for the transactions, Morgan Stanley disclosed that "the subprime mortgage loan market has experienced increasing levels of delinquencies and defaults, and we cannot assure you that this will not continue." Morgan Stanley was concerned about delinquencies and actively monitored the loans on its balance sheet.

The NC4 Transaction

Morgan Stanley understated currently delinquent loans

15. Morgan Stanley had a practice of closing its securitizations in the same month as the disclosed cut-off date. The NC4 transaction had a cut-off date of May 1, but did not, however, close until June 20, 2007. Indeed, Morgan Stanley did not formally acquire 90% of the loans to be included in the offering until on or about May 23, 2007. The late closing presented Morgan Stanley with operational issues as certain June payments due to the issuing trust had already been credited to Morgan Stanley. To resolve this problem, on June 11, 2007, Morgan Stanley entered into a side agreement with the servicer requiring Morgan Stanley to return the June payments to the servicer to be held for the benefit of the issuing trust. Pursuant to the side letter, the servicer agreed to provide Morgan Stanley with a June remittance report, reflecting payment data as of May 31, on or about June 18, 2007.

16. Morgan Stanley received updated remittance data a week prior to closing. Specifically, on or about June 13, 2007, Collateral Analysis provided the Finance Group with a stratification reflecting updated remittance as of June 12. The Finance Group used this updated data to move certain loans in and out of the pool.

17. On June 14, Morgan Stanley filed a preliminary Prospectus Supplement offering $781,761,000 of securities collateralized by approximately 5,340 subprime mortgage loans with a total principal balance of just over $1 billion as of the cut-off date. The preliminary Prospectus Supplement included bracketed blanks as placeholders for the specific delinquency values. It stated that: "[ ] mortgage loans with an aggregate principal balance as of the cut-off date of $[ ], which represents *no more than approximately 1%* of the mortgage loans in the final mortgage pool, were more than 30 days but less than 60 days Delinquent with respect to their scheduled monthly payments." [Emphasis added]

18. On June 20, 2007, after obtaining the updated remittance data discussed above Morgan Stanley filed a final Prospectus Supplement including specific delinquency values. Morgan Stanley stated that "41 mortgage loans with an aggregate principal balance as of the cut-off date of $10,501,930.24, which represents approximately 0.9994% of the mortgage loans in the final mortgage loan pool, were more than 30 days but less than 60 days Delinquent with respect to their scheduled payments."

19. The updated payment data Morgan Stanley obtained on June 13, 2007, showed that delinquencies as of that date were materially higher than what Morgan Stanley disclosed in the final Prospectus Supplement as of the May 1 cut-off date. This updated payment information was available to Morgan Stanley a week before the transaction closed.

20. The first monthly remittance report issued to investors by the Securities Administrator for the NC4 transaction, which reported payments made through May 31, 2007, showed that 4.5% of the aggregate principal balance of the loans collateralizing the NC4 transaction was more than 30 days delinquent as of May 31, 2007. 133 loans were 30 days delinquent, and 42 loans were 60 days delinquent.

21. Despite the NC4 transaction's delayed closing, and representations in the offering documents that extended the delinquency representation to the June 20 closing date, Morgan Stanley failed to disclose that (1) over 130 additional loans had become 30 days delinquent; and (2) the 41 loans it had disclosed as 30 days delinquent as of the cut-off date had become more than 60 days delinquent at closing. These loans have actual and projected losses, based on bankruptcies, REOs, and foreclosures, of $21,230,863.

22. Morgan Stanley obtained money from sales of securities to investors in the NC4 transaction, including an underwriting fee of $484,091 on the NC4 transaction, and through the sale of the mortgages to the NC4 trust on the closing date of the securitization.

The HE7 Transaction

Morgan Stanley understated historically delinquent loans

23. On September 28, 2007, Morgan Stanley filed a final Prospectus Supplement offering $1,376,624,000 of securities collateralized by approximately 7,670 subprime mortgage loans with a total principal balance of approximately $1.5 billion.

24. As described in paragraph 12, *supra,* Morgan Stanley represented that except for the loans it disclosed as delinquent, no payment under any other loan collateralizing the HE7 transaction had been more than 30 days delinquent at any time since origination.

25. Generally, loans collateralizing the HE7 transaction were more seasoned (that is, had been outstanding for a longer period of time and had a fuller payment history) than loans that collateralized prior RMBS sponsored by Morgan Stanley. Some investors requested information about the seasoned loans' delinquency history. As a result, the Finance Group requested that Collateral Analysis create a chart detailing the historical delinquency of the loans seasoned more than 6 months ("seasoned loan historical delinquency chart"). The chart showed that at least 25% of the seasoned loans had been historically delinquent, which equated to approximately 8.5% of the loans in the overall pool. The Finance Group forwarded that chart to sales personnel, who made it available to potential investors upon their request.

26. Some investors also requested historical delinquency information for the loans seasoned six months or less. The Finance Group requested and received a chart detailing the historical delinquencies for approximately 90% of the loans in the HE7 transaction, regardless of the seasoning (the "historical delinquency chart"). It showed that 1,241 loans, or approximately 17% of the loans in the HE7 pool, by principal balance, had been historically delinquent. This second chart was not forwarded to Morgan Stanley's sales personnel or potential investors.

Morgan Stanley understated currently delinquent loans

27. The Prospectus Supplement stated that "83 mortgage loans with an aggregate principal balance as of the cut-off date of $15,389,733.19, which represents approximately 0.99% of the mortgage loans in the final mortgage loan pool, were more than 30 days but less than 60 days Delinquent with respect to their scheduled monthly payments." Morgan Stanley represented that the HE7 transaction had a cut-off date of September 1, 2007.

28. In determining the delinquency information disclosed in the HE7 prospectus supplement, Morgan Stanley used data that included payments as of September 20 (not the September 1 cut-off date) to determine which months the loans were paid thru. By using payment information that included payments made after the cut-off date, Morgan Stanley counted 46 loans as current that otherwise would have been delinquent as of the cut-off date. As a result, Morgan Stanley underreported the number of loans that were more than 30 days delinquent as of the cut-off date and the percentage of such loans in the trust.

29. These historically delinquent loans and currently delinquent loans have actual and projected losses, based on bankruptcies, REOs, and foreclosures, of $138,255,564.

30. Morgan Stanley obtained money from sales of securities to investors in the HE7 transaction, including an underwriting fee of $657,334 on the HE7 transaction, and through the sale of the mortgages to the HE7 trust on the closing date of the securitization.

Morgan Stanley's Misleading Statements Concerning Current and Historical Delinquencies

31. Morgan Stanley misled investors in the NC4 transaction by stating that 41 mortgage loans with a total principal balance of approximately $10 million were more than 30 but less than 60 days delinquent. A week before the NC4 transaction closed, Morgan Stanley received updated payment data and thus knew or should have known that the number of delinquent mortgage loans and the corresponding percentage of the aggregate principal balance were materially higher. Further, Morgan Stanley knew or should have known that 60-day delinquent loans were included in the pool.

32. Morgan Stanley misled investors in the HE7 transaction by stating that 83 mortgage loans were more than 30 but less than 60 days delinquent as of the September 1 cut-off date when it knew or should have known that it used borrower payments received after the cut-off date to reduce the number of delinquent loans. Morgan Stanley also misled investors by representing that, except for the loans it disclosed as delinquent, no mortgage loan payment had been more than 30 days delinquent since origination. Morgan Stanley had the seasoned loan historical delinquency chart and the historical delinquency chart and thus knew or should have known that at least an additional 1,241 loans had been historically delinquent.

33. Information about the delinquency status of mortgage loans that provide collateral for an RMBS offering was important to investors. The mortgage loans that provide

the collateral in an RMBS transaction are the primary source of funds by which investors potentially can recover and profit from their investments. The presence and extent of current and historical delinquencies is important information to investors because it helps enable them to assess the likelihood that borrowers will be able to repay their mortgage loans and, as a result, whether investors will suffer losses on, or will recover and profit from, their investments.

34. As described above, Morgan Stanley received money from sales of securities to investors in the NC4 and HE7 transactions.

<u>Morgan Stanley's Acts that Operated or Would Operate as a Fraud or Deceit Upon Purchasers</u>

35. The NC4 and HE7 transactions were the last subprime RMBS Morgan Stanley sponsored, issued, and underwrote. Morgan Stanley conducted these RMBS transactions during a time when the subprime residential housing market was experiencing unprecedented delinquencies. As part of this process, Morgan Stanley failed to remove or accurately disclose loans with either current and/or historical delinquencies, contrary to the disclosures made in each transaction's offering documents.

36. For the NC4 transaction, Morgan Stanley used a cut-off of May 1 despite the resulting operational issues and its receipt of updated payment data showing current delinquencies had materially increased prior to closing. As a result, Morgan Stanley filed offering documents that materially understated current delinquencies.

37. For the HE7 transaction, Morgan Stanley included at least 1,241 loans that had been historically delinquent. Despite receiving the historical delinquency chart showing that approximately 17% of the HE7 loan pool had been historically delinquent, Morgan Stanley represented in the offering documents that no loans had been more than 30 days delinquent since origination, other than the approximately 1% of loans disclosed as being more than 30 days delinquent. Further, Morgan Stanley used payment data as of September 20, not the stated September 1 cut-off date, as the basis for stating in its offering documents that less than 1% of the aggregate principal balance of the pool was 30 days delinquent.

<u>Conclusion</u>

38. Section 17(a)(2) of the Securities Act prohibits a person in the offer or sale of securities from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, misleading. Section 17(a)(3) of the Securities Act prohibits a person in the offer or sale of securities from directly or indirectly engaging in a transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities. A violation of these sections may be established by a showing of negligence.

40. As a result of the conduct described above, Respondents Morgan Stanley & Co. LLC, Morgan Stanley ABS Capital I Inc., and Morgan Stanley Mortgage Capital Holdings LLC violated Sections 17(a)(2) and (3) of the Securities Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Respondents shall, jointly and severally, within ten (10) business days of the entry of this Order, pay disgorgement of $160,627,852, prejudgment interest of $17,995,437, and a civil penalty of $96,376,711 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Morgan Stanley and Co. LLC, Morgan Stanley ABS Capital I Inc., and Morgan Stanley Mortgage Holding Company LLC, as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew Sporkin, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6030.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest, and penalties referenced in Section IV.B above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. The disgorgement, interest, and civil penalties paid to the Fair Fund shall be distributed pursuant to a distribution plan (the "Plan") to be administered in accordance with the Commission Rules of Practice governing Fair Funds and Disgorgement Plans. A Fund Administrator (the "Administrator") shall be appointed by the Commission. The Administrator will prepare, in coordination with the Commission staff, the Plan to distribute the Fair Fund resulting from this Order. The Plan will be subject to Commission approval. Respondents shall, jointly and severally, pay all reasonable administrative costs and expenses of each distribution, including the fees and expenses of a tax administrator, within thirty (30) days after receipt of an invoice for such services.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9618 / July 24, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72670 / July 24, 2014

ADMINISTRATIVE PROCEEDING
Release No. 3-15982

In the Matter of	ORDER UNDER SECTION 27A(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(a)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934
MORGAN STANLEY AND CO. LLC; MORGAN STANLEY ABS CAPITAL I INC.; and MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC	
Respondents.	

Morgan Stanley and Co. LLC, Morgan Stanley ABS Capital I, Inc., Morgan Stanley Mortgage Capital Holdings LLC (collectively "Morgan Stanley") have submitted a letter on behalf of themselves and their affiliates, dated May 2, 2014, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 (the "Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 (the "Exchange Act") arising from their settlement of cease-and-desist proceedings brought by the Commission.

On July 24, 2014, the Commission instituted cease-and-desist proceedings against Morgan Stanley. In the Order Instituting Proceedings (the "Order"), the Commission found that Morgan Stanley made misleading disclosures regarding the number of current and/or historical loan delinquencies in two subprime residential mortgage-backed securities transactions that Morgan Stanley sponsored, issued, and underwrote in 2007. Based on these allegations, the Commission concluded that Morgan Stanley violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. Without admitting or denying the findings, Morgan Stanley consented to the entry of the Order requiring them to, among other things, cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer … during the 3-year period preceding the date on which the statement was first made … has been made the subject of a judicial or administrative decree or order arising out of a government action that … (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws…." Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Morgan Stanley's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the issuance of the Commission's Order instituting proceedings is appropriate and should be granted.

Accordingly, IT IS ORDERED, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Morgan Stanley and Co. LLC, Morgan Stanley ABS Capital I, Inc., Morgan Stanley Mortgage Capital Holdings LLC and their present and future affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72672 / July 24, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3570 / July 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15984

In the Matter of **DEBRA L. HOBBS, CPA** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Debra L. Hobbs ("Respondent" or "Hobbs") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, and the findings contained in Section III. C. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. Hobbs, age 56, was a certified public accountant licensed to practice in the State of Virginia, but that license expired in 1988. Hobbs served as Chief Financial Officer of Volt Delta Resources, LLC ("VDR"), a subsidiary of Volt Information Sciences, Inc. ("Volt" or "the Company"), from 1996 until April 2008. In April 2008, Hobbs became the Chief Operating Officer of VDR. Volt terminated Hobbs in February 2012.

B. Volt is a New York corporation with its principal executive offices located in New York, New York. Its common stock, previously registered under Section 12(b) of the Exchange Act, traded on the New York Stock Exchange (symbol VOL) until it was de-listed on May 9, 2011, for the Company's failure to file periodic reports with the Commission. Volt now trades in the Over-the-Counter market (OTC symbol VISI). Volt provides services relating to staffing, telecommunications, computer systems, and printing through four corresponding business units.

C. On January 18, 2013, a final judgment was entered against Hobbs, permanently enjoining her from violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 10b-5(a), 10b-5(b), 10b-5(c); and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-11 thereunder, in the civil action entitled *Securities and Exchange Commission v. Volt Information Sciences, Inc. and Debra L. Hobbs*, Civil Action No. 13-CV-237 (S.D.N.Y.) (January 10, 2013). The Court did not impose payment of a civil penalty based on Hobbs' agreement to cooperate in a related enforcement proceeding.

D. The Commission's Complaint alleges that for Volt's fiscal year ended October 28, 2007, Volt's computer-segment subsidiary recognized $7.55 million of revenue that it included in its financial statements filed with the Commission. The Complaint further alleges that the recognition of the revenue was improper and caused Volt's net income for its fourth quarter and fiscal year ended October 28, 2007, to be overstated materially and falsely. The Complaint further alleges that Hobbs justified the improper revenue recognition by asserting the existence of, and the subsidiary's substantial performance on, a purported $10 million contract of sale with a customer, even though the purported contract did not lead to any revenue event recognizable under Generally Accepted Accounting Principles.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Hobbs' Offer.

Accordingly, IT IS HEREBY ORDERED, effective immediately, that:

A. Hobbs is suspended from appearing or practicing before the Commission as an accountant.

B. After 5 years from the date of this order, Respondent may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. A preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. An independent accountant. Such an application must satisfy the Commission that:

   (a) Respondent, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

   (b) Respondent, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

   (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72671 / July 24, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3569 / July 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15983

In the Matter of JOHN ("JACK") J. EGAN, JR., CPA Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against John ("Jack") J. Egan, Jr. ("Respondent" or "Egan") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III. C. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. John ("Jack") J. Egan, Jr. ("Respondent" or "Egan"), C.P.A. (New York, inactive), age 64, was Chief Financial Officer, Principal Financial Officer, and Senior Vice President of Volt Information Sciences, Inc. ("Volt" or "the Company") from at least 2006 to August 10, 2011. Effective August 10, 2011, he became Volt's Senior Vice President of Global Planning and Budgeting. Volt terminated Egan in February 2012. Egan is currently retired.

B. Volt is a New York corporation with its principal executive offices located in New York, New York. Its common stock, previously registered under Section 12(b) of the Exchange Act, traded on the New York Stock Exchange (symbol VOL) until it was de-listed on May 9, 2011, for the Company's failure to file periodic reports with the Commission. Volt now trades in the Over-the-Counter market (OTC symbol VISI). Volt provides services relating to staffing, telecommunications, computer systems, and printing through four corresponding business units.

C. On July 18, 2014, a final judgment was entered against Egan, permanently enjoining him from violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 10b-5(a), 10b-5(b), 10b-5(c),13b2-1, 13b2-2, and 13a-14; and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Exchange Act Rules 12b-20, 13a-1, and 13a-11 thereunder, in the civil action entitled *Securities and Exchange Commission v. Jack J. Egan, Jr., C.P.A.*, Civil Action No. 13-CV-236 (S.D.N.Y.) (January 10, 2013). The Court also barred Egan from serving as an officer or director of any issuer that has a class of securities registered with the Commission or that is required to file reports with the Commission, and ordered him to pay a $35,000 civil money penalty.

D. The Commission's Complaint alleges that for Volt's fiscal year ended October 28, 2007, Volt's computer-segment subsidiary recognized fraudulent revenue based on a purported completion and sale of two of four software modules that constituted the core of a new directory assistance system for a significant telecommunications customer. The Complaint further alleges that Egan, a certified public accountant, Volt's Chief Financial Officer, and Volt's Principal Financial Officer, knew or was reckless in not knowing that recognition of the fraudulent revenue did not comply with Generally Accepted Accounting Principles; and that nevertheless, he signed Volt's public filings that included the revenue in Volt's financial statements for the Company's fourth-quarter and fiscal year ended October 28, 2007. The Complaint also alleges that Egan, as Volt's Principal Financial Officer, certified Volt's Annual Reports on Forms 10-K for the Company's fiscal years ended 2007 and 2008, when he knew or was reckless in not knowing that the financial statements were materially false and misleading.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Egan's Offer.

Accordingly, IT IS HEREBY ORDERED, effective immediately, that Egan is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72673 / July 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15985

In the Matter of LavaFlow, Inc. Respondent.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against LavaFlow, Inc. ("LavaFlow" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. This proceeding concerns the LavaFlow ECN, an alternative trading system ("ATS") operated by LavaFlow, a registered broker-dealer. ATSs are an important component of the national market system, as an estimated 12% of the U.S. equity trading volume occurs on ATSs.[2] Similar to a registered exchange, an ATS provides a marketplace for buyers and sellers of securities, although ATSs, unlike exchanges, do not perform regulatory functions.[3] A subset of ATSs known as electronic communications networks ("ECN"), including the LavaFlow ECN, generally display the top of their order book (e.g., best bid, best offer) in the national market system.[4] Other ATSs, colloquially known as "dark pools," generally do not display their best bids and offers.

2. Commission rules provide safeguards for ATS subscribers. In particular, Rule 301(b)(10) of Regulation ATS requires that an ATS establish safeguards and procedures to protect subscribers' confidential trading information and adopt and implement adequate oversight procedures to ensure that the safeguards and procedures for protecting subscribers' confidential trading information are followed. 17 C.F.R. § 242.301(b)(10). In adopting Rule 301(b)(10), the Commission recognized "the sensitive nature of the trading information subscribers send to alternative trading systems" and stated its intention that Rule 301(b)(10) "prevent the disclosure or the use of information about a customer's trading orders."[5]

3. Although a broker-dealer that operates an ATS may conduct operations that are separate from its operation of the ATS, the existence of such operations outside of the ATS presents a risk that ATS subscriber information could be accessed and misused. For this reason,

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] U.S. Securities and Exchange Commission Division of Economic and Risk Analysis, Alternative Trading Systems: Description of ATS Trading in National Market System Stocks (Oct. 2013), available at http://www.sec.gov/marketstructure/research/ats_data_paper_october_2013.pdf.

[3] An ATS is "any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b-16; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading." Regulation ATS, Rule 300(a).

[4] See Rule 600(b)(23) of Regulation NMS, 17 CFR § 242.600(b)(23) (definition of electronic communications network).

[5] See Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (Dec. 8, 1998), 63 Fed. Reg. 70844, 70879 (Dec. 22, 1998) ("Adopting Release").

the Commission highlighted the importance that ATSs "separate the alternative trading system functions from other broker-dealer functions" when the Commission adopted Regulation ATS. Adopting Release, 63 Fed. Reg. at 70879.

4. LavaFlow violated Rule 301(b)(10) from at least March 2008 through March 2011 by failing to establish adequate safeguards and procedures to protect the LavaFlow ECN subscribers' confidential trading information. Specifically, LavaFlow allowed a technology application named "ColorBook" to have knowledge of the non-displayed orders of the ECN's subscribers who believed they were submitting their orders to the LavaFlow ECN directly and were not using the smart order routing services of ColorBook to do so ("direct subscriber non-displayed order flow") and to use this information when routing orders of ColorBook customers who were also the ECN's subscribers. For most of the relevant period, ColorBook was owned and operated by LavaFlow's affiliate, Lava Trading, Inc. ("Lava Trading"). ColorBook performed a wide variety of functions, both for the LavaFlow ECN and other businesses outside the ATS, including a smart order routing business that was provided to registered broker-dealer customers.

5. In March 2008, ColorBook began to apply its knowledge of direct subscriber non-displayed order flow when determining how to route orders for smart order routing customers, who were also LavaFlow ECN subscribers. Although ColorBook customers could not themselves see or access the direct subscriber non-displayed order flow, the practice implicated Rule 301(b)(10) because the smart order router was outside the LavaFlow ECN and had access to, and retained, information about the direct subscriber non-displayed order flow. In light of ColorBook's dual functions with respect to the ECN and the smart order routing business, LavaFlow was required to establish adequate safeguards and procedures to protect the direct subscriber non-displayed order flow from being accessed by the affiliated smart order router business. LavaFlow did adopt certain safeguards and procedures, but these measures were inadequate because they were not designed to ensure, and memorialize, that LavaFlow made sufficient disclosures to, or obtained consent from, all ECN subscribers concerning ColorBook having access to and using the direct subscriber non-displayed order flow. ColorBook's ability to have access to and use of the direct subscriber non-displayed order flow was discontinued in March 2011. From March 2008 through March 2011, ColorBook executed over 400 million shares for smart order router customers who were also ECN subscribers as a result of ColorBook's access to direct subscriber non-displayed order flow resting at the LavaFlow ECN.

6. LavaFlow did not file amendments to its Form ATS regarding material changes in the LavaFlow ECN's operations regarding ColorBook's use of the LavaFlow ECN's direct subscriber non-displayed order flow. Rule 301(b)(2) of Regulation ATS requires that an ATS file an amendment on Form ATS at least 20 days prior to implementing a material change to the operation of the ATS, 30 days after the end of a quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate, and promptly upon discovering that an initial operation report filed on Form ATS or an amendment on Form ATS was inaccurate when filed. 17 C.F.R. § 242.301(b)(2).

7. In addition, Lava Trading operated as an unregistered broker-dealer from August 2008 through February 2009. Lava Trading filed a Form BDW to withdraw its registration as a broker-dealer, which became effective on August 8, 2008. Despite withdrawing its registration and

stating in its Form BDW filing that it ceased business on May 30, 2008, Lava Trading continued to operate in the same fashion as it had when it was registered, including effecting transactions in securities in the accounts of others and charging customers on a transaction basis. From the time Lava Trading withdrew its registration through February 2009, LavaFlow willfully aided and abetted and caused Lava Trading's operation as an unregistered broker-dealer in violation of Section 15(a) of the Exchange Act.

Respondent

8. **LavaFlow**, a Florida corporation wholly-owned by Citigroup Financial Products, Inc. which is in turn wholly-owned by Citigroup Global Markets, Inc. (collectively "Citigroup"), registered with the Commission as a broker-dealer in March 2002 (SEC File No. 8-65299) and maintains its principal place of business in New York, New York. The LavaFlow ECN serves as an automated matching system for NMS stocks[6] where subscribers (e.g., registered broker-dealers) enter orders into the LavaFlow ECN order book for execution and display. As of December 31, 2013, the LavaFlow ECN was the largest ECN and the largest ATS as measured by dollar volume executed with over $361 billion in total dollar volume of executions for the fourth quarter of 2013.

Other Relevant Entity

9. **Lava Trading** was incorporated in Delaware in March 1999 with its principal place of business in New York, New York. Lava Trading was registered as a broker-dealer (SEC File No. 8-66782) from June 29, 2005 until its Form BDW became effective on August 8, 2008. Beginning in October 2008, Lava Trading's customers were notified that Lava Trading was being combined with LavaFlow, with LavaFlow being the surviving broker-dealer. Lava Trading continued to operate as a broker-dealer through February 2009. Citigroup owned Lava Trading, including through other Citigroup subsidiaries during different periods of time.

Facts

The Smart Order Routing Business

10. Lava Trading was founded in 1999 as a technology services company. Lava Trading's flagship product was ColorBook, which was software that provided smart order routing services to over 100 registered broker-dealers that principally used ColorBook to route their customers' orders to execution venues. Until February 2009, Lava Trading charged its customers on a transaction basis for all orders that were executed due to ColorBook's smart order routing functions.

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[6] A "NMS stock" is defined as "any NMS security other than an option." A "NMS security" is defined as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See Regulation NMS, Rules 600(b)(46) and 600(b)(47), Exchange Act Release No. 51808 (Jun. 9, 2005), 70 Fed. Reg. 37496 (Jun. 29, 2005).

11. An "order router" is an application that generally allows an end user to submit an order to an execution venue. A "smart order router" applies preprogrammed analytics that carry out an execution strategy for order flow provided to the smart order router. Analytics programmed into the smart order router continually make adjustments, including re-routing orders in light of updated data feeds, to carry out their strategies and/or avoid unfavorable price movements until its customers' orders are canceled or executed.

12. A key component of ColorBook was the broad spectrum of market data ColorBook gathered. ColorBook gathered market data, including displayed and non-displayed orders, from a variety of sources to form a consolidated picture of liquidity available in the market. Information about displayed orders came from publicly-available market data sources. Information about non-displayed orders came from a variety of sources. One such source was a memory function in ColorBook that allowed it to retain a record of orders that had been submitted through ColorBook that were not displayed or visible in the market.

13. Another source of non-displayed orders came from smart order routing customers. For example, many such customers would submit through ColorBook non-displayed orders that the customers destined for one or more particular venues; in such instances, ColorBook acted as an order router to direct the order to the venue specified by the customer. In other instances, a customer would submit an order that ColorBook would determine how and where to route. In both instances, ColorBook would know that a particular order rested at a particular venue, and until ColorBook received a message that the order was canceled or executed, ColorBook could use that information to determine how to route a subsequent order so long as the customer submitting the subsequent order was entitled to trade on that venue. Because the order had a non-displayed component, ColorBook had unique knowledge of that order compared to others in the market, and ColorBook could provide a benefit to smart order routing customers by taking into account such information in determining where and how to route orders.

14. In another example, sometimes ColorBook's analytics would determine that a portion of an order should not be immediately routed to a market center. In such instances, information concerning that portion of the order that was not immediately routed rested within ColorBook and was not publicly-displayed. ColorBook could use this information when determining where and how to route subsequent orders from smart order routing customers.

15. In both of these examples, ColorBook considered its historical knowledge of non-displayed resting orders to make future routing decisions.

ColorBook's Services for the LavaFlow ECN

16. In January 2006, an affiliate of Lava Trading acquired from a third party the ECN that subsequently became known as the LavaFlow ECN. At the time of the acquisition, Lava Trading personnel believed they could leverage ColorBook to improve the ECN by using ColorBook to handle important ECN functions, such as Regulation NMS compliance. Lava Trading and LavaFlow shared technology personnel, sales personnel, administrative personnel, and marketing materials. Lava Trading and LavaFlow also shared the same website as the online

means for prospective customers to learn about Lava Trading's smart order routing services and the LavaFlow ECN.

17. ColorBook's services to the LavaFlow ECN were distinct from ColorBook's services to customers of the smart order routing business. Although they shared some personnel, the ECN and the smart order routing business were separate businesses with distinct operations and under distinct regulatory requirements.

18. In October 2006, Lava Trading and LavaFlow entered into service and cost allocation agreements. Through these agreements, the ColorBook software performed significant parts of the operations of the LavaFlow ECN. For example, ColorBook was the means by which the LavaFlow ECN checked for compliance with many of its regulatory obligations, including those under Regulation NMS and Regulation SHO.

19. ColorBook also provided the LavaFlow ECN with the architecture to monitor the ECN system's health and functionality, including monitoring ECN latencies, response time to orders, and system slowness alerts. ColorBook was also the means to provide financial information exchange (also known as "FIX") connectivity for the LavaFlow ECN subscribers to directly connect to the ECN.

20. ColorBook was also an important component of the LavaFlow ECN's contingency planning. In the event that the ECN completely shut down, LavaFlow's contingency plan called for ColorBook, which was owned by Lava Trading until at least February 2009, to process emergency trades for the ECN. This was notwithstanding that Lava Trading was an unregistered entity from August 2008 through February 2009.

LavaFlow Allowed ColorBook to Access Direct Subscriber Non-Displayed Order Flow When Smart Routing Orders of Other ECN Subscribers

21. LavaFlow initially did not allow ColorBook to access and use its knowledge of the ECN direct subscriber non-displayed order flow when determining how to smart route subsequent orders.

22. However, from March 2008 until March 2011, LavaFlow allowed ColorBook to access and use its knowledge of the LavaFlow ECN direct subscriber non-displayed order flow when making smart order routing decisions for those smart order routing customers who also were subscribers of the LavaFlow ECN.

23. The direct subscriber non-displayed orders submitted to the LavaFlow ECN mostly consisted of "hidden orders," "reserve orders," and "pegged orders." Hidden orders are an order type in which all or a portion of the order is not displayed to other market participants. Reserve orders are those orders in which portions of the order are only gradually displayed in accordance with customer instructions as the portions are executed. A pegged order is a limit order, the price of which is automatically adjusted to follow the price movement of a reference price (e.g., best bid, best offer). Some or all of a pegged order might be non-displayed.

24. When a customer of the smart order routing business submitted an order, ColorBook would consult all data available to it. For a ColorBook customer's order to interact with the ECN non-displayed order flow, the ColorBook customer had to be a subscriber of the ECN. If an order placed by such a customer could match a non-displayed order resting on the LavaFlow ECN, then ColorBook would route the customer's order to the LavaFlow ECN with the expectation that the two orders would match. This feature was marketed as a benefit to ECN subscribers that would enhance execution rates and price improvement for non-displayed resting orders sent to the LavaFlow ECN.

25. Thus, ColorBook was able to use its knowledge of the non-displayed orders resting at the LavaFlow ECN, including the direct subscriber non-displayed order flow to which it should not have had access, when making routing decisions for smart order routing customers entitled to trade at that venue.

26. LavaFlow had in place certain safeguards, such as physical barriers and restrictions on employee access to prevent the unauthorized access to the LavaFlow ECN subscribers' confidential information. For instance, there is no evidence that information about the ECN's non-displayed order flow was displayed, or otherwise communicated to, customers of the smart order routing business or other third parties. However, LavaFlow did not obtain meaningful consent from its ECN subscribers to allow ColorBook to have access to direct subscriber non-displayed order flow or to use that knowledge when making routing decisions for smart order routing customers who were also ECN customers. Marketing materials, which were shown to at least some ECN subscribers, contained language that some ECN non-displayed resting orders would be "exposed" to ColorBook. Based on these materials, some ECN subscribers might have understood that LavaFlow was granting access to, and ColorBook was retaining information about, ECN subscribers' non-displayed order flow. LavaFlow did not have procedures in place to ensure that all ECN subscribers reviewed and understood these materials, which were used for marketing purposes, not compliance. As a result, these materials were not a fulsome or adequate means of ensuring that the LavaFlow ECN subscribers consented to, or were notified of, ColorBook's use of the confidential trading information, and were not a sufficient safeguard or procedure to protect subscribers' confidential trading information.

27. Some of the LavaFlow ECN subscribers believed that non-displayed orders that they submitted directly to the LavaFlow ECN would rest solely on the ECN, and not be known by the smart order router. The subscribers' understanding as to how the ECN would handle their orders was important, because the subscribers are entitled to expect no unauthorized disclosure of their confidential trading information to any entity outside the ATS.

28. LavaFlow also failed to disclose on its Form ATS, in accordance with Rule 301(b)(2) of Regulation ATS, that LavaFlow was providing ColorBook with access to direct subscriber non-displayed order flow so that ColorBook could use this knowledge when making routing decisions for customers of the smart order routing business who were also ECN subscribers. LavaFlow was required to file an amendment on Form ATS to reflect this material change to the operation of the ATS at least 20 days before the implementation of such change.

Lava Trading Operated as an Unregistered Broker-Dealer

29. Beginning in June 2005, Lava Trading operated as a registered broker-dealer, providing services to its smart order router customers, LavaFlow, and other registered broker-dealers.

30. On June 8, 2008, Lava Trading filed Form BDW to withdraw its registration as a broker-dealer, and that withdrawal was made effective August 8, 2008.

31. In its notice to withdraw its registration, Lava Trading stated that it ceased business on May 30, 2008. However, Lava Trading did not do so and continued to provide broker-dealer services. Lava Trading, through ColorBook, continued to operate nearly every aspect of the LavaFlow ECN's functionality after May 30, 2008. Lava Trading used ColorBook to route orders through the LavaFlow ECN to other venues, and effected transactions via ColorBook in approximately 200 million shares per day on behalf of over 100 registered broker-dealer subscribers. Lava Trading, through ColorBook, also continued to provide the smart order routing services described in paragraphs 10-15. After August 2008, when Lava Trading's withdrawal was made effective, Lava Trading continued to state that it was a registered broker-dealer on a shared website that was the online presence for both Lava Trading and LavaFlow. The website provided the means for prospective customers to learn about Lava Trading's smart order routing business, among other things.

32. LavaFlow provided substantial assistance to Lava Trading when Lava Trading continued to provide broker-dealer services after August 2008. LavaFlow provided the operational support, including technology and sales personnel, for Lava Trading to continue to provide broker-dealer services. LavaFlow maintained and was responsible for the contents on the website it shared with Lava Trading that continued to state that Lava Trading was a registered broker-dealer. LavaFlow also issued invoices on LavaFlow letterhead to Lava Trading's customers. The invoices sent by LavaFlow billed the customers on a transaction basis for services performed by Lava Trading, and these were the same services Lava Trading performed when it was a registered broker-dealer.

33. In February 2009, Lava Trading entered into an agreement with LavaFlow whereby LavaFlow would receive all income associated with contractual arrangements that previously existed between Lava Trading and its customers. From August 2008 through February 2009, Lava Trading received transaction-based compensation for broker-dealer services, including approximately $1.8 million for orders handled by the smart order router.

Violations

34. Rule 301(b)(10) of Regulation ATS requires an ATS to establish adequate safeguards and procedures to protect subscribers' confidential trading information and to implement adequate oversight procedures to ensure that these safeguards and procedures are

followed. As a result of the conduct described above, LavaFlow willfully[7] violated Rule 301(b)(10) because it allowed the ColorBook smart order router to have access to the direct subscriber non-displayed order flow and use such knowledge when making routing decisions.

35. As a result of the conduct described above, LavaFlow also willfully violated Rule 301(b)(2) of Regulation ATS, which requires an ATS to amend its Form ATS before implementing a material change to its operation. LavaFlow did not disclose on its Form ATS that it was allowing the ColorBook smart order router to have access to the direct subscriber non-displayed order flow and use such knowledge when making routing decisions.

36. As a result of the conduct described above, LavaFlow willfully aided and abetted and caused Lava Trading's violation of Section 15(a) of the Exchange Act. Section 15(a) makes it unlawful for any broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission. Lava Trading continued to provide broker-dealer services after the withdrawal of its registration had become effective. LavaFlow aided and abetted and caused Lava Trading's unregistered broker-dealer violation by providing operational support, maintaining a website that described Lava Trading's smart order routing services and stated Lava Trading was a registered broker-dealer, and by issuing invoices on LavaFlow letterhead in connection with Lava Trading's broker-dealer services.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b)(4) and 21C of the Exchange Act it is hereby ORDERED that:

A. LavaFlow shall cease and desist from committing or causing any violation and any future violation of Rules 301(b)(10) and 301(b)(2) of Regulation ATS;

B. LavaFlow shall cease and desist from committing or causing any violation and any future violation of Section 15(a) of the Exchange Act;

C. LavaFlow is censured;

D. LavaFlow shall, within 10 days of the entry of this Order, pay disgorgement of $1,800,000, along with prejudgment interest of $350,000, and a civil penalty of $2,850,000 to the Securities and Exchange Commission for transmittal to the U.S. Treasury. If timely payment is not

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[7] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying LavaFlow, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel M. Hawke, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Stein, Disapproved

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. IC-31188 / July 28, 2014

In the Matter of

BNP PARIBAS S.A.
787 Seventh Avenue
New York, NY 10019

FISCHER FRANCIS TREES & WATTS, INC.
200 Park Avenue, 11th Floor
New York, NY 10166

BISHOP STREET CAPITAL MANAGEMENT CORP.
First Hawaiian Center
999 Bishop Street, Suite 2806
Honolulu, HI 96813

IMPAX ASSET MANAGEMENT LTD.
Norfolk House
31 St. James's Square
London SW1Y 4JR
United Kingdom

(812-14327)

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING A PERMANENT EXEMPTION FROM SECTION 9(a) OF THE ACT

BNP Paribas S.A. ("BNPP"), Fischer Francis Trees & Watts, Inc., Bishop Street Capital Management Corp., and Impax Asset Management Ltd. (collectively, "Applicants"), filed an application on June 30, 2014, and an amendment on July 10, 2014, requesting temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other company of which BNPP is or hereafter becomes an affiliated person (together with Applicants, "Covered Persons") from section 9(a) of the Act with respect to guilty pleas entered on June 30, 2014 and on July 9, 2014, by BNPP in the Supreme Court of the State of New York, County of New York, and the United States District Court for the Southern District of New York, respectively.

On June 30, 2014, the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting the Covered Persons from section 9(a) of the Act (Investment Company Act Release No. 31140) until the Commission takes final action on the application for a permanent order. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the conduct of Applicants has been such as not to make it against the public interest or protection of investors to grant the permanent exemption from the provisions of section 9(a) of the Act.

Accordingly,

IT IS ORDERED, pursuant to section 9(c) of the Act, on the basis of the representations and conditions contained in the application filed by BNP Paribas S.A., et al. (File No. 812-14327) that Covered Persons be and hereby are permanently exempted from the provisions of section 9(a) of the Act, operative solely as a result of the guilty pleas, described in the application, entered by the Supreme Court of the State of New York, County of New York, and the United States District Court for the Southern District of New York on June 30, 2014 and on July 9, 2014, respectively.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72678 / July 28, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3571 / July 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15986

In the Matter of SMITH & WESSON HOLDING CORPORATION, Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (the "Exchange Act"), against Smith & Wesson Holding Corporation ("Smith & Wesson" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that[1]:

Summary

1. This matter concerns violations of the anti-bribery, books and records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") by Smith & Wesson. The violations took place from 2007 through early 2010, when a senior employee and other employees and representatives of Smith & Wesson made, authorized, and offered to make improper payments and/or to provide gifts to foreign officials in an attempt to win contracts to sell firearm products to foreign military and law enforcement departments. During this period, Smith & Wesson's international business was in its developing stages and accounted for approximately 10% of the company's revenues. Smith & Wesson's employees and representatives engaged in a systemic pattern of making, authorizing and offering bribes while seeking to expand the company's overseas business.

2. The bribe payments were inaccurately recorded in Smith & Wesson's books and records as legitimate sales commissions or other business expenses. Despite its push to make sales in new and high risk markets overseas, Smith & Wesson failed to establish an appropriate compliance program or devise and maintain an adequate system of internal accounting controls, which allowed the repeated improper offers and payments to continue undetected for years.

Respondent

3. Smith & Wesson is a Nevada corporation with its principal place of business in Springfield, Massachusetts. The company, through its wholly owned subsidiary, Smith & Wesson Corp., manufactures firearms and markets its products both domestically in the United States and internationally in multiple countries. Smith & Wesson does not have any international subsidiaries and conducts its international business directly and through brokering agents. Much of Smith & Wesson's international business involves the sale of firearms to foreign law enforcement and military departments. Smith & Wesson issues and maintains a class of publicly-traded securities registered pursuant to Section 12(b) of the Exchange Act, which trades on the NASDAQ Stock Exchange.

Facts

4. From 2007 through early 2010, as Smith & Wesson sought to break into international markets and increase sales, certain of the company's employees and representatives engaged in a pervasive practice of making, authorizing and offering improper payments to foreign government officials as a means of obtaining or retaining international business. Although only

[1] The findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

one of the contracts was fulfilled before the unlawful activity was identified, company employees made or authorized the making of improper payments in connection with multiple ongoing or contemplated international sales.

5. In 2008, for example, Smith & Wesson retained a third-party agent in Pakistan to assist the company in obtaining a deal to sell firearms to a Pakistani police department. Even after the agent notified the company that he would be providing guns valued in excess of $11,000 to Pakistani police officials in order to obtain the deal, and that he would be making additional cash payments to the officials, the company authorized the agent to proceed with the deal. Smith & Wesson's Vice President of International Sales and its Regional Director of International Sales authorized the sale of the guns to the agent to be used as improper gifts and authorized payment of the commissions to the agent, while knowing or consciously disregarding the fact that the agent would be providing the guns and part of his commissions to Pakistani officials as an inducement for them to award the tender to the company. Smith & Wesson ultimately sold 548 pistols to the Pakistani police for $210,980 and profited from the corrupt deal in the amount of $107,852.

6. In 2009, Smith & Wesson attempted to win a contract to sell firearms to an Indonesian police department by making improper payments to its third party agent in Indonesia, who indicated that part of the payment would be provided to the Indonesian police officials under the guise of legitimate firearm lab testing costs. On several occasions, Smith & Wesson's third-party agent indicated that the Indonesian police expected Smith & Wesson to pay them additional amounts above the actual cost of testing the guns as an inducement to enter the contract. The agent later notified Smith & Wesson's Regional Director of International Sales that the price of "testing" the guns had risen further. Smith & Wesson's Vice President of International Sales and its Regional Director of International Sales authorized and made the inflated payment, but a deal was never consummated.

7. Similarly, Smith & Wesson made improper payments in 2009 to its third party agent in Turkey, who indicated that part of the payments would be provided to Turkish officials in an attempt to secure two deals in Turkey, for the sale of handcuffs to Turkish police and firearms to the Turkish military. Neither of these interactions resulted in the shipment of products, as Smith & Wesson was unsuccessful bidding for the first deal, while the latter deal was ultimately canceled. Similarly, Smith & Wesson authorized improper payments to third party agents who indicated that parts of these payments would be provided to foreign officials in Nepal and Bangladesh in unsuccessful attempts to secure sales contracts in those countries. Although these contemplated deals in Nepal and Bangladesh were never consummated in each case, the company had obtained or attempted to obtain the contract by using third party agents as a conduit for improper payments to government officials.

8. Despite making it a high priority to grow sales in new and high risk markets overseas, the company failed to design and implement a system of internal controls or an appropriate FCPA compliance program reasonably designed to address the increased risks of its new business model. The company did not perform any anti-corruption risk assessment and conducted virtually no due diligence of its third-party agents regardless of the perceived level of corruption in the country in which Smith & Wesson was seeking to do business. Smith & Wesson

failed to devise adequate policies and procedures for commission payments, the use of samples for test and evaluation, gifts, and commission advances. The Vice President of International Sales had almost complete authority to conduct the company's international business, including the sole ability to approve most commissions. Smith & Wesson's FCPA policies and procedures, and its FCPA-related training and supervision also were inadequate. As a result of these compliance and internal controls failures, Smith & Wesson's Vice President of International Sales and the Regional Director of International Sales were able to cause the company to pay and/or authorize improper payments in numerous countries around the globe for a period of several years.

Smith & Wesson's Remedial Measures

9. Smith & Wesson took prompt action to remediate its immediate FCPA issues, including: conducting an internal investigation, terminating its entire international sales staff; terminating pending international sales transactions; and re-evaluating the markets in which it sought international sales. In addition, Smith & Wesson implemented a series of significant measures to improve its internal controls and compliance processes, including: implementing new internal audit procedures to identify FCPA issues; creating more robust controls on payments, gifts, and other transactions in connection with international business activity; enhancing its FCPA compliance policies and procedures; and creating a Business Ethics and Compliance Committee.

Legal Standards and Violations

10. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

FCPA Violations

Anti-Bribery Violations

11. Smith & Wesson violated the anti-bribery provisions of the federal securities laws when it authorized its agents to provide gift guns and make other improper payments to foreign officials in Pakistan, Indonesia, Turkey, Nepal and Bangladesh in order to induce foreign officials in those countries to award sales contracts to Smith & Wesson.

12. As a result of the conduct described above, Smith & Wesson violated Section 30A of the Exchange Act, which prohibits any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act, in order to obtain or retain business, from giving, or authorizing the giving of, anything of value to any foreign official for purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage; or to induce a foreign official to use his influence with a foreign government or foreign governmental instrumentality to influence any act or decision of such government or instrumentality. 15 U.S.C. § 78dd-1.

Books and Records Violations

13. Smith & Wesson failed to properly account for the improper payments to its agent in Pakistan, the inflated lab testing payments to its agent in Indonesia, and the improper expense payments to its agents in Turkey in its books and records. Instead, Smith & Wesson improperly characterized the payments it made in Pakistan as legitimate commissions, and those that it made in Indonesia and Turkey as legitimate business expenses.

14. As a result of the conduct described above, Smith & Wesson violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and disposition of their assets. 15 U.S.C. § 78m(b)(2)(A).

Internal Controls Violations

15. Smith & Wesson failed to devise and maintain sufficient internal controls with respect to its international sales operations. While the company had a basic corporate policy prohibiting the payment of bribes, it failed to implement a reasonable system of controls to effectuate that policy. For example, Smith & Wesson failed to devise adequate policies and procedures with regard to commission payments, the use of samples for test and evaluation, gifts, and commission advances. Further, Smith & Wesson's FCPA policies and procedures, and its FCPA-related training and supervision were inadequate.

16. As a result of the conduct described above, Smith & Wesson violated Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization. 15 U.S.C. § 78m(b)(2)(B).

Commission Consideration of Smith & Wesson's Remedial Efforts

In determining to accept the Offer, the Commission considered the remedial acts promptly undertaken by Respondent and the cooperation afforded the Commission staff.

IV.

UNDERTAKINGS

Respondent undertakes to:

17. Report to the Commission staff on the status of Respondent's remediation and implementation of compliance measures at six-month to twelve-month intervals during a two-year term, as set forth below. Should Respondent discover credible evidence, not already reported to the Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of

property or interests may have been offered, promised, paid, or authorized by an entity or person working directly for Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall: (i) conduct an initial review and submit an initial report, and (ii) conduct and prepare follow-up reviews and reports, as described below:

a. Respondent shall submit to the Commission staff a written report within 180 calendar days of the signing of this agreement setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent reviews. The report shall be transmitted to Paul G. Block, Assistant Regional Director, Enforcement Division, Boston Regional Office, U.S. Securities and Exchange Commission, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110. The Commission staff may, upon written request of Respondent and for good cause shown, approve an extension of the time period for issuance of the report.

b. Respondent shall undertake two follow-up reviews, incorporating any comments provided by the Commission staff on Respondent's initial review and report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws.

c. The first follow-up review and report shall be completed by 180 days after the initial review. A subsequent follow-up review and report shall be completed by 360 days after the completion of the preceding follow-up review.

d. The Commission staff may, upon written request of Respondent and for good cause shown, approve an extension of the time period for issuance of the report.

18. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

19. The periodic review and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed by the parties in writing, (3) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

V.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Smith & Wesson's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Smith & Wesson shall cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

B. Respondent shall comply with the undertakings enumerated in Section IV above; and

C. Respondent shall, within ten (10) days of the entry of this Order, pay $2,034,892 to the United States Treasury, including $107,852 in disgorgement, $21,040 in prejudgment interest, and a civil monetary penalty of $1,906,000. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Smith & Wesson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Paul G. Block, Assistant Regional Director, Foreign Corrupt Practices Act Unit, Boston Regional Office, Securities and Exchange Division, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72694 / July 28, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3881 / July 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15987

In the Matter of

Dominick & Dominick LLC
and Robert X. Reilly,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND CEASE-AND-DESIST ORDERS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Dominick & Dominick LLC ("D&D," or the "Company") and that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Advisers Act against Robert X. Reilly ("Reilly," collectively with D&D, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of

1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

This matter concerns breaches of fiduciary duty to certain advisory clients by D&D, a dually registered investment adviser and broker-dealer, in violation of the Advisers Act. First, for those clients who participated in D&D's "Commission-Only" and "Fee Plus Commission" advisory programs, D&D did not seek best execution in that D&D's best execution analyses did not account for brokerage commissions. Further, D&D's best execution analyses did not analyze the commissions being charged to these advisory clients after it negotiated a reduction in execution and clearing costs with its clearing firm in 2010. Second, D&D failed to disclose a conflict of interest involving its clearing firm—that it received rebates consisting of a significant portion of the interest these advisory clients paid the clearing firm for margin loans.

Additionally, D&D violated the Advisers Act by (1) not adopting and implementing written best execution policies and procedures reasonably designed to prevent violation of the Advisers Act, (2) engaging in transactions with advisory clients on a principal basis without obtaining client consent before completing the transactions, and (3) making inaccurate statements in its Form ADV concerning best execution and principal transactions, and omitting disclosure of rebates received on margin loan interest.

Reilly was responsible for conducting D&D's best execution analyses for advisory clients and adopting and implementing its written best execution policies and procedures for advisory clients. Reilly, therefore, caused D&D's best execution and policy and procedures violations.

Respondents

1. D&D is, and at all times relevant herein, has been, a dually registered investment adviser and broker-dealer with a principal place of business in New York, New York. During the relevant time period, D&D had approximately 30 advisory personnel who had clients in one or more of D&D's five types of advisory programs. D&D also provides brokerage services to nearly all of its advisory clients.

2. Reilly, 45, is, and at all times relevant herein, has been, the Chief Operating Officer and a registered investment advisory representative of D&D. Reilly is a resident of Connecticut.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

Best Execution Violations

3. From March 2008 through December 2012, D&D performed monthly best execution analyses for selected trades in advisory client accounts that compared the price obtained by its clearing broker to the Bloomberg price for that security at the same date and time. By only looking at execution price, these analyses did not consider the commissions that certain of D&D's advisory clients paid. In addition, during this period, D&D examined the brokerage commissions advisory clients were charged only twice, once in 2008, and again following a 2012 SEC exam. Both times, D&D's analysis only compared a D&D schedule of brokerage commissions with other advisers' brokerage commission schedules. These analyses therefore also did not examine the actual commissions charged to certain of D&D's advisory clients.

4. Additionally, D&D did not conduct any best execution analysis in August 2010 when it negotiated an amendment to its clearing agreement with its clearing broker. The agreement reduced the clearance and execution costs charged by D&D's clearing broker, and increased D&D's share of the commissions charged to all of its customers (including certain of its advisory clients) without altering the allocation of responsibilities between D&D as an introducing broker and its clearing broker. The amended clearing agreement reduced the clearance and execution costs paid by D&D for equity, options and fixed income transactions. Notwithstanding this reduction in executing and clearing costs, D&D did not consider whether certain of its advisory clients continued to receive best execution.

5. Reilly was responsible for conducting D&D's best execution analyses for advisory clients.

Disclosure Violations

6. From January 2008 to September 2012, D&D did not disclose a conflict involving its clearing firm—that D&D received a rebate from its clearing firm of a certain portion of the interest that certain advisory clients paid the clearing firm for margin loans. Specifically, under D&D's agreement with its clearing firm, the clearing firm rebated to D&D a percentage of the difference between the average customer margin rate and the federal funds rate. D&D did not disclose in its Form ADV during this period that it received such interest rebates from its clearing firm.[2]

7. Additionally, from January 2008 through September 2012, Part II of D&D's Form ADV contained misleading statements of material fact. First, D&D stated in its Form ADV that "[w]e have negotiated commission rates with D&D for our clients which we believe to be competitive with rates available elsewhere for similar services." This statement suggests that D&D's commission rates resulted from arms-length negotiation between D&D in its investment adviser capacity and D&D in its broker capacity when they did not.

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[2] D&D's Form ADV Part 2A was revised in September 2012 to reflect that disclosure following an SEC examination. Prior to amendments of Form ADV in 2010, Part 2 was designated as 'Part II.' See Rel. IA-3060 (July 28, 2010) at n.6.

8. D&D also stated in its Form ADV that it "will not act as principal in any transaction for your accounts or act as agent on both sides of any transaction, unless you have granted us permission to do so prior to the completion of the transaction." This statement indicates that D&D would seek client consent before settling principal transactions with advisory clients when it did not do so.

Failure to Adopt and Implement Sufficient Written Policies and Procedures

9. From January 2008 through December 2012, D&D did not adopt and implement written best execution policies and procedures reasonably designed to ensure compliance with the Advisers Act. D&D's written advisory best execution policies and procedures made little mention of any actual policies or procedures. They referred only to fixed income transactions and made no mention of any other securities transactions. Moreover, D&D's policies and procedures did not consider commissions charged to advisory clients as part of its overall best execution analysis.

10. Reilly was responsible for adopting and implementing D&D's best execution policies and procedures for advisory clients.

Violative Principal Transactions

11. From January 2008 through August 2012, D&D engaged in approximately 140 principal transactions with advisory clients without obtaining consent prior to completing such transactions. D&D's practice was to send a letter to the advisory client after a transaction was executed but before settlement, providing details of the transaction and stating that it had engaged in the transaction as a principal. The letter did not seek the client's consent to proceed with or settle the transaction, and D&D did not otherwise obtain the client's consent. It simply gave notice of the transaction and required no further action from the client.

Violations

12. As a result of the conduct described above, D&D willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.[3]

13. As a result of the conduct described above, D&D willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which makes it unlawful to provide investment advice without adopting and implementing written policies and procedures reasonably designed to prevent violations of the Advisers Act.

14. As a result of the conduct described above, Reilly caused D&D's violations of Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.

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[3] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

15. As a result of the conduct described above, D&D willfully violated Section 206(3) of the Advisers Act, which makes it unlawful for an adviser to engage in principal transactions with a client without seeking consent before completion of the transaction.

16. As a result of the conduct described above, D&D willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Undertakings

Respondent D&D has undertaken to:

17. Engage for one year a qualified consultant ("Consultant") not unacceptable to the staff to assist D&D in developing and implementing policies and procedures reasonably designed to promote D&D's compliance with the Advisers Act, including best execution and related disclosure obligations for advisory clients, and its obligations under Section 206(3) regarding principal transactions.

18. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

Respondents' Remedial Efforts

19. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by D&D and cooperation afforded the Commission staff. Specifically, D&D revised its best execution policies and procedures to include consideration of the total cost of effecting advisory client transactions. Further, D&D retained a consultant to assist it in developing and implementing policies and procedures reasonably designed to promote D&D's compliance with the Advisers Act, including its best execution and related disclosure obligations for advisory clients.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act it is hereby ORDERED that:

A. D&D cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Reilly cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

C. D&D is censured.

D. D&D shall pay disgorgement and prejudgment interest as follows:

(1) Respondent shall, within 10 days of the entry of this Order, pay disgorgement of $136,523.00 and prejudgment interest of $11,083.60 consistent with the provisions of this Subsection D. Within ten (10) days of the entry of the Order, D&D shall deposit the full amount of the disgorgement and prejudgment interest thereon (the "Disgorgement Fund") into an account acceptable to the Commission staff and D&D shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
b. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
c. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500th MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631.

(2) D&D shall be responsible for administering the Disgorgement Fund. D&D shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed and approved by the Commission staff in accordance with this Subsection D. If the total amount otherwise payable to a client is less than $25.00, D&D shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection D.

(3) D&D shall, within one hundred twenty (120) days from the entry of the Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name and account number of each affected advisory client; (ii) the exact amount of the payment to be made to such client; and (iii) a description of the client transactions ("Relevant Transactions") to which the client's payment relates. D&D also shall provide to the Commission staff such additional information and supporting documentation relating to the Relevant Transactions as the Commission staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any client account directly or indirectly in the name of or for the benefit of D&D. In the event of one or more objections by the Commission staff to D&D's proposed Calculation and/or any of its information or supporting documentation, D&D shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that D&D is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection D.

(4) D&D shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to a Calculation approved by the Commission staff within one hundred fifty (150) days of the entry of the Order, unless such time period is extended as provided in paragraph (9) of this Subsection D.

(5) If D&D does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond D&D's control, or if D&D has not transferred any portion of the Disgorgement Fund to a client because that client is due less than $25.00, D&D shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection D is approved by the Commission. D&D may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Respondent may also pay by certified check, bank cashier's check, or United States postal money order

payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and submitted under cover letter that identifies D&D as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631.

(6) D&D shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by D&D and shall not be paid out of the Disgorgement Fund.

(7) Within two hundred and ten (210) days after the date of entry of the Order, D&D shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; and (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury. D&D shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies D&D as a Respondent in these proceedings and the file number of these proceedings to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. D&D shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(8) After D&D has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(9) The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

E. D&D shall, within 10 days of the entry of the Order, pay a civil monetary penalty of $75,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. Reilly shall, within 10 days of the entry of the Order, pay a civil monetary penalty of $10,000. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch

HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

G. Respondent D&D shall comply with the undertakings enumerated in Paragraphs 17-18 above.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9619 \ July 28, 2014

In the Matter of Dominick & Dominick LLC Respondent.	**ORDER UNDER RULE 506(d) OF THE SECURITIES ACT OF 1933 GRANTING A WAIVER OF THE RULE 506(d)(1)(iv)(B) DISQUALIFICATION PROVISION**

I.

Dominick & Dominick LLC ("D&D") has submitted a letter, dated July 23, 2014, requesting a waiver of the Rule 506(d)(1)(iv)(B) disqualification from relying on the exemption under Regulation D from the registration requirements under the Securities Act of 1933 (the "Securities Act").

II.

The Securities and Exchange Commission ("Commission") issued an order instituting administrative and cease-and-desist proceedings against D&D (the "Cease-and-Desist Order") pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") for breaches of fiduciary duty to certain advisory clients by D&D, a dually registered investment adviser and broker-dealer, in violation of the Advisers Act.

III.

The exemption under Rule 506 of Regulation D would be unavailable to D&D as a result of the Cease-and-Desist Order. Rule 506(d)(2) of Regulation D provides, however, that the disqualification "shall not apply. . . upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied."

IV.

Based upon the representations set forth in D&D's request, the Commission has determined that pursuant to Rule 506(d) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied.

Accordingly, **IT IS ORDERED**, pursuant to Rule 506(d) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 506(d)(1)(iv)(B) under the Securities Act resulting from the Cease-and-Desist Order is hereby granted to D&D.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72702 / July 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15988

In the Matter of **ROBERT G. PEARSON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 17A(c) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 17A(c) of the Securities Exchange Act of 1934 ("Exchange Act") against Robert G. Pearson ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 17A(c) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Since August 1990 through at least the filing of the District Court Action, Respondent has been the president, chief executive officer and sole shareholder of Illinois Stock Transfer Company d/b/a ist Shareholder Services ("IST"), a transfer agent registered with the Commission. Respondent, 56 years old, is a resident of Winfield, Illinois.

2. On May 22, 2014, the Commission filed a complaint against Respondent and IST in the United States District Court for the Northern District of Illinois entitled United States Securities and Exchange Commission v. Pearson, et al., 14 C 3785 (N.D. Ill.) (the "District Court Action"). On July 9, 2014, a judgment was entered by consent against Respondent in the District Court Action, permanently enjoining him from: (i) committing future violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. §§ 240.10b-5(a) and 10b-5(c)]; and (ii) aiding and abetting future violations of Section 17A(d)(1) of the Exchange Act and Rules 17Ad-12, 17Ad-13, 17Ad-16, and 17f-1 thereunder. [15 U.S.C. § 78q-1(d)(1) and 17 C.F.R. §§ 240.17Ad-12, 17Ad-13, 17Ad-16, and 17f-1.]

3. The Commission's complaint in the District Court Action alleged, among other things, that, in connection with the purchase or sale of securities and in connection with the performance of services as a transfer agent, IST and Respondent (a) fraudulently misused and misappropriated issuer and shareholder funds; (b) engaged in the activities of a transfer agent in contravention of the rules promulgated by the Commission; (c) failed to maintain reasonable safeguards for funds and securities for each issue of securities for which IST performed stock transfer functions; (d) failed to file annually with the Commission an independent accountant's report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds; (e) failed to give timely written notice of assumption or termination of transfer agent services to the appropriate qualified registered securities depository; and (f) failed to report timely to the Commission or its designee, the discovery of the loss of any securities certificate where criminal actions are not suspected and when the securities certificate has been missing or lost for a period of two business days, or the recovery of a securities certificate that was previously reported as lost, missing or stolen.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Pearson's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 17A(c) of the Exchange Act Respondent Pearson be, and hereby is barred from association with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72707 / July 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15989

In the Matter of SELECT FIDELITY TRANSFER SERVICES, LTD., Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 17A(c)(3) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 17A(c)(3) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Select Fidelity Transfer Services, Ltd. ("Select Fidelity" or "Respondent").

II.

A. SUMMARY

After an investigation, the Division of Enforcement alleges that:

1. Since its registration with the Commission as a transfer agent in 2005, Select Fidelity has failed to file required annual reports on Form TA-2, failed to amend inaccurate information on its Form TA-1 as required, and declined to furnish required records to Commission examiners or permit inspection thereof.

B. RESPONDENT

2. **Select Fidelity** was incorporated in 2003 in Ontario, Canada with its stated headquarters in Ontario. Select Fidelity has been registered with the Commission as a transfer agent since July 15, 2005, pursuant to Section 17A of the Exchange Act.

C. FACTS

3. On June 20, 2005, Select Fidelity filed a transfer agent registration statement on Form TA-1 with the Commission. Select Fidelity's Form TA-1 listed its principal office and mailing address as 335 Bay Street, Suite 600, Toronto, Ontario (the "Registration Address"), which was written over the following address that was crossed-out by hand: 36 Toronto Street, Toronto, Ontario (the "Old Address"). The Form TA-1 listed two control persons. Select Fidelity's registration statement became effective on July 15, 2005.

4. Since its registration, Select Fidelity has not filed an annual report on Form TA-2.

5. Since its registration, Select Fidelity has not filed an amended Form TA-1.

6. On October 29, 2010, the Commission's Division of Trading & Markets issued a notice pursuant to delegated authority informing a number of transfer agents, including Select Fidelity, that the Commission intended to issue an order pursuant to Section 17A(c)(4)(B) of the Exchange Act cancelling its registration on or after December 15, 2010, because it appeared that such transfer agents were no longer in existence or had ceased doing business as transfer agents (the "Notice"). The Notice stated that "[t]he representative of any transfer agent listed in the Appendix who believes the registration of the transfer agent should not be cancelled must notify the Commission in writing or by e-mail prior to December 15, 2010." The Notice listed an email address for any responses.

7. On November 10, 2010, an individual identifying himself as Michel Herreweghe ("Herreweghe") emailed the address listed in the Notice.[1] Herreweghe sent his email from a "selectfidelity.com" email address, identified himself in the email as Select Fidelity's "Manager," and included his telephone number. He requested that Select Fidelity not be de-registered and represented that Select Fidelity would file updated information.

8. Herreweghe was not one of the control persons listed on Select Fidelity's Form TA-1.

9. Based on Herreweghe's email, Select Fidelity's registration was not cancelled.

10. On December 29, 2010, Select Fidelity updated its EDGAR account information with a new business and mailing address: 4025 Dorchester Road, Suite 338, Niagara Falls, Ontario (the "Updated EDGAR Address"). However, Select Fidelity failed to file the required amended Form TA-1 or any of the annual reports required to be filed on Form TA-2.

11. On August 22, 2012, Commission examiners tried to conduct an on-site examination of Select Fidelity at three addresses: (i) the Updated EDGAR Address, (ii) an address

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[1] The Division of Enforcement's investigation has identified an individual named Michel Van Herreweghe with residential addresses in Ontario, Canada and Fort Lauderdale, Florida.

listed for Select Fidelity at www.otcbb.com, and (iii) the Old Address. The examiners found no sign of Select Fidelity at any of these addresses.

12. Commission examiners then contacted Herreweghe by phone that day. Herreweghe claimed that Select Fidelity had moved to a new address: 6150 Valley Way, Suite 116, Niagara Falls, Ontario (the "New Address").

13. The same day, on August 22, 2012, Commission examiners visited the New Address but found no signs of Select Fidelity. They contacted Herreweghe again. He claimed that Select Fidelity was still in the process of moving to the New Address.

14. On September 17, 2012, Commission examiners again spoke with Herreweghe by phone. Herreweghe claimed that Select Fidelity had completed its move to the New Address.

15. On September 19, 2012, Commission examiners requested certain transfer agent books and records from Select Fidelity by letter (sent by email). The requested records included (i) lists of Select Fidelity's addresses, owners, vendors, and issuer clients, (ii) transfer journals, (iii) master security holder files, and (iv) control books for each issuer client.

16. On October 9, 2012, Commission examiners notified Select Fidelity by letter (sent by email) that they would commence an on-site examination of Select Fidelity beginning on October 15, 2012. The letter requested confirmation no later than October 10, 2012, that Select Fidelity staff members would be on site and available during that time frame. That day, the examiners spoke with Herreweghe to discuss the document requests and examination.

17. The next day, on October 10, 2012, Herreweghe emailed the examiners. He claimed that he was "not an officer or director of Select Fidelity" but was "acting under power of attorney as a consultant." Herreweghe produced a list of several addresses for Select Fidelity and the names of two of its purported owners, neither of whom was listed on Select Fidelity's Form TA-1. Herreweghe did not produce any documents in response to the examiners' other requests or confirm Select Fidelity's availability for the examination. A Commission examiner replied to the email that no response had been received regarding the availability of Select Fidelity staff and again requested a response no later than the following morning.

18. The next afternoon, on October 11, 2012, Herreweghe emailed the examiners. He claimed to be unavailable for the on-site examination. He said Select Fidelity would suspend its activities, that its office would be closed until further notice, and that it would file a Form TA-W to withdraw its registration.

19. On October 18, 2012, the examiners sent Select Fidelity a letter citing its failure to permit inspection of its required books and records. The letter notified Select Fidelity that its failure could result in a recommendation to the Commission that action be taken against Select Fidelity.

20. Herreweghe spoke with the examiners by phone thereafter. He claimed that Select Fidelity could not file a Form TA-W to withdraw its registration because it had no living officers.

He claimed that he had no authority to act for Select Fidelity and that Select Fidelity was no longer operational.

21. On June 4, 2013, Commission examiners visited the Registration Address listed on Select Fidelity's original Form TA-1 but found the premises vacant.

D. VIOLATIONS

As a result of the conduct described above, Select Fidelity willfully violated Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2 thereunder by failing to file required annual reports on Form TA-2, failing to amend its Form TA-1 as required, failing to furnish required records to Commission examiners upon request, and failing to permit Commission examiners to inspect its records.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent, pursuant to Section 17A(c)(3) of the Exchange Act, including, but not limited to, civil penalties pursuant to Section 21B(a)(1) of the Exchange Act;

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of, Sections 17(a)(1), 17(a)(3), 17(b)(1), 17A(c)(2), and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1(c) and 17Ac2-2 thereunder, and whether Respondent should be ordered to pay civil penalties pursuant to Section 21B(a)(2) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72723 / July 30, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3573 / July 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15992

In the Matter of MARC SHERMAN Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Marc Sherman ("Respondent" or "Sherman").

II.

After an investigation, the Division of Enforcement alleges that:

A. <u>SUMMARY</u>

1. During its 2008 fiscal year and continuing up to its filing for Chapter 11 bankruptcy on July 2, 2009 (the "relevant period"), QSGI Inc. ("QSGI" or the "Company") was a reseller of and maintenance services provider for used computer equipment. Sherman, who during the relevant period served as QSGI's Chief Executive Officer and Chairman, was aware of deficiencies in and the circumvention of internal controls for inventory and the resulting falsification of the Company's books and records. On occasion in 2008 and increasing in frequency in 2009, Sherman improperly accelerated the recognition on QSGI's books and records of accounts receivable and receipt of inventory in order to increase the borrowing base available under a revolving credit facility with the Company's chief creditor. Sherman withheld this information from the Company's external auditors in connection with their audit of the financial statements for

the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009, and made affirmative material misrepresentations and statements that were materially misleading as a result of his omission of information in management representation letters to the auditors about the design, maintenance, and operation of internal controls. Further, Sherman signed a Form 10-K and a Form 10-K/A for the 2008 fiscal year, each containing a management's report on internal control over financial reporting ("ICFR"), as required by Section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") and Exchange Act Rule 13a-15(c), which falsely represented that he, in his capacity as CEO, had participated in assessing the effectiveness of the Company's ICFR. Sherman also signed certifications required under Section 302 of the Sarbanes-Oxley Act and Rule 13a-14 of the Exchange Act included in filings with the Commission falsely representing that he had evaluated ICFR and, based on this evaluation, disclosed all significant deficiencies to the auditors. The certifications were attached to the 2008 Forms 10-K and 10-K/A, and to the first quarter 2009 Form 10-Q filed with the Commission, which Sherman also signed.

B. RESPONDENT

2. Sherman, age 50 and a resident of West Palm Beach, Florida, founded QSGI in 2001. He has since served as QSGI's CEO and Chairman of its Board of Directors. After the Company filed for bankruptcy and until at least July 2010, he served as Chief Financial Officer and Chief Accounting Officer.

C. RELEVANT ENTITY

3. QSGI, Inc., incorporated in 1967 in Delaware under a different name and headquartered during the relevant period in West Palm Beach, Florida, is engaged in the business of purchasing, refurbishing, selling, and servicing used computer equipment, parts and mainframes. On May 4, 2011, the U.S. Bankruptcy Court for the Southern District of Florida, West Palm Beach Division, confirmed QSGI's plan of reorganization pursuant to which, effective June 17, 2011, the corporate shell merged with a private company which had been founded by Sherman and others. The Company's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc.

D. SHERMAN'S AWARENESS OF DEFICIENCIES IN AND CIRCUMVENTION OF INVENTORY CONTROLS

4. During the relevant period, QSGI maintained inventory principally at facilities in New Jersey and Minnesota. The New Jersey inventory, which comprised 50% of the company's reported gross inventory and 55% of its reported net inventory, after reduction for reserves, as of the close of its fiscal year ended December 31, 2008, was comprised of laptops, monitors, and other consumer electronics and components. The Minnesota inventory, which comprised 40% of QSGI's reported gross inventory and 35% of its reported net inventory, after reduction for reserves, as of the close of QSGI's 2008 fiscal year, was comprised chiefly of servers, mainframes, and component parts.

5. For a period of years prior to the Company filing for bankruptcy in 2009, QSGI experienced recurring inventory control problems. Throughout the relevant period, Company personnel: (1) shipped certain inventory received into its facilities out to customers without making the appropriate entries into the Company's books and records; and (2) removed items from physical inventory without relieving the inventory from the Company's books and records. Company personnel removed component parts from the physical inventory for such parts without recording the parts removed and occasionally stripped component parts from operating systems without recording the parts removed. As a result, the Company's books and records incorrectly reflected certain components in inventory and operating systems as intact systems. These component parts were then sold by the Company or used for the Company's maintenance services.

6. These internal control problems resulted in the falsification of QSGI's books and records relating to QSGI's inventory.

7. These inventory control problems escalated at the Minnesota facility beginning in 2007 for several reasons. First, a manufacturer's policy of curtailing resellers' ability to modify machines to customers' specifications hastened QSGI's shift from selling machines to selling parts and providing repair and maintenance services. This, in turn, exacerbated the problem in Minnesota of personnel removing component parts from operating systems without any corresponding adjustment to the Company's books and records. The units continued to be recorded on the books and records as intact systems. Second, key personnel, including accounting personnel, left the Minnesota operations in late 2007. Personnel designated to replace the departed accounting staff lacked an accounting background and failed to fully carry out their responsibilities. Third, while QSGI management had undertaken to design, document, and implement internal controls to come into compliance with federal securities law requirements, such efforts were not begun in earnest in Minnesota until late 2007, after the departure of key personnel. Prior to that point, QSGI senior management had accorded Minnesota personnel a fair amount of autonomy, including using an accounting system that differed from the one used in New Jersey.

8. The Company's efforts to introduce new controls to the Minnesota operations during the 2008 fiscal year largely failed. More particularly, the Company failed to design procedures taking into account the existing control environment, including the qualifications and experience level of persons employed to handle accounting. Training of accounting, sales, and warehouse personnel either did not take place or was inadequate. As a result, controls the Company attempted to implement in February 2008 were widely ignored during the ensuing ten months of the 2008 fiscal year and well into the 2009 fiscal year. For example, sales and warehouse personnel often failed to document their removal of items from inventory or, to the extent they did prepare the paperwork, accounting personnel often failed to process the paperwork and to adjust inventory in the company's financial reporting system. The Company's attempts to monitor compliance on an ongoing basis were also inadequate. Company personnel regularly circumvented controls.

9. In periodic filings with the Commission relating to the relevant period and certifications included therein pursuant to Rule 13a-14 of the Exchange Act, Sherman acknowledged his responsibility for the design and operation of internal controls.

10. During the relevant period, Sherman knew of ongoing deficiencies in and the circumvention of internal controls relating to inventory. For example, in the final days of the 2008 fiscal year, QSGI senior management, including Sherman, communicated openly amongst themselves about the failed implementation, including training in, and circumvention of controls introduced to the Minnesota operations earlier in the year. Management agreed that corrective action was needed which, given the timing, could not be undertaken until 2009. Based on further communications, management, including Sherman, was aware that the problems continued through the Company filing for bankruptcy in July 2009.

D. SHERMAN'S IMPROPER ACCELERATION OF RECOGNITION OF INVENTORY AND ACCOUNTS RECEIVABLE

11. QSGI reported net losses in each fiscal year from 2005 through 2008. Under these circumstances, QSGI's ability to procure operating funds was critical to the Company's survival.

12. In mid-2008, QSGI entered into a revolving credit facility with its chief creditor. QSGI's inventory and accounts receivable factored into the weekly calculation of the borrowing base under the revolving credit facility. A QSGI employee calculated the borrowing base and reported it to Sherman and to QSGI's Chief Financial Officer, subsequently redesignated QSGI's Vice President of Finance and Controller, ("PFO") for their review prior to sending it to the chief creditor.

13. On occasion in 2008 and continuing on a more frequent basis up until the company filed for bankruptcy in July 2009, the weekly calculations would show that QSGI had exceeded its borrowing limit or would not be able to borrow enough to continue operations through the upcoming week. When this occurred, Sherman, either directly or indirectly through the PFO, directed the QSGI employee to not report the calculations to the creditor pending other items being posted to the books and records so that the employee could redo the weekly calculation.

14. In order to increase the borrowing base, Sherman directed the accelerated recognition of accounts receivable and/or the receipt of product into inventory on QSGI's books and records. Under generally accepted accounting principles, recognition of the accounts receivables and receipt of product into inventory should not have occurred until days or up to approximately a week later, when all conditions for recognition had been satisfied.

15. Once the accounts receivable and/or receipt of inventory were improperly recorded on QSGI's books and records, the QSGI employee would recalculate the borrowing base using the new figures

E. SHERMAN MISLED QSGI's EXTERNAL AUDITORS

16. At no time during the relevant period did Sherman disclose, or direct anyone else to disclose, to QSGI's external auditors the foregoing inventory and accounts receivable issues and the resulting falsification of QSGI's books and records.

17. To the contrary, in management representations letters to the auditors, Sherman made affirmative misrepresentations and made statements that were misleading as a result of his omitting material facts which were necessary in order to make the statements made not misleading. Sherman affirmatively represented in management representation letters he provided to the auditors in connection with their review of quarterly financial statements in 2008 that either there were no significant deficiencies or that he had disclosed to the auditors all such deficiencies. At the conclusion of the fiscal year, he provided yet another management representation letter in connection with the external auditors' audit of the 2008 fiscal year financial statements in which he acknowledged his responsibility for establishing and maintaining ICFR. Omitted from the letter was any reference to the existence, or his disclosure to the auditors, of significant deficiencies. Following on his management representation letters for the first three quarters of 2008, however, and in the context of his having acknowledged in the year-end management representation letter his responsibility for establishing and maintaining ICFR, the omission of any reference to significant deficiencies implied falsely that none existed. In the management representation letter relating to the external auditors' review of the first quarter 2009 financial statements, Sherman affirmatively misrepresented that he had disclosed to the auditors all significant deficiencies.

18. Had Sherman disclosed to the external auditors the deficiencies in and the circumvention of inventory controls and the improper acceleration of accounts receivable and inventory recognition described above, the auditors would have changed the nature, timing, and extent of their procedures in conducting the audit of the financial statements for the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009.

F. SHERMAN'S FALSE REPRESENTATIONS IN MANAGEMENT'S REPORT ON ICFR AND CONCERNING QSGI'S CRITICAL ACCOUNTING POLICIES

19. QSGI's Form 10-K for the fiscal year ended December 31, 2008 included a Company management's report on ICFR, as required by Section 404 of the Sarbanes-Oxley Act and Exchange Act Rule 13a-15(c). A management's report on ICFR was also included in a Form 10-K/A for the 2008 fiscal year.

20. The management report included in both filings falsely represented that QSGI's management, with the participation of QSGI's CEO, Sherman, had evaluated QSGI's ICFR as of December 31, 2008 using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control – Integrated

Framework. In fact, Sherman, in his capacity as CEO, did not participate in any evaluation and was unfamiliar with the referenced framework.

21. The discussion on critical accounting policies in QSGI's Form 10-K for the fiscal year ended December 31, 2008 falsely stated that: (1) QSGI "recognize[d] revenue when it is realized or realizable and earned"; and (2) "[m]anagement continually monitors its inventory valuation . . . ."

22. The discussion on critical accounting policies included in QSGI's Form 10-K/A for the fiscal year ended December 31, 2008 falsely stated that, "[m]anagement closely monitors and analyzes inventory for potential obsolescence and slow-moving items on an item-by-item basis . . . ."

23. Sherman knew, or was reckless in not knowing, that these statements were materially false and misleading. During the relevant period, he had directed the improper accelerated recognition of accounts receivable, which would have had the effect of improperly increasing revenue by a commensurate amount. He also knew that the Company did not closely monitor inventory in the manner described because the Company lacked the necessary resources.

24. Sherman signed the 2008 Form 10-K in his capacity as Chief Executive Officer and Chairman of QSGI's Board of Directors. Sherman signed the 2008 Form 10-K/A in his capacity as Chairman, CEO, CFO and CAO. He was the sole signing officer of the Form 10-K/A. The 2008 Form 10-K and Form 10-K/A were filed with the Commission on March 31, 2009 and July 23, 2010, respectively.

G. SHERMAN'S FALSE SARBANES-OXLEY CERTIFICATIONS

25. Pursuant to Sarbanes-Oxley Act Section 302 and Exchange Act Rule 13a-14, Sherman signed certifications which were attached to QSGI's 2008 Forms 10-K and 10-K/A and Form 10-Q for the periods ended December 31, 2008 and March 31, 2009, respectively.

26. Sherman individually certified in each filing that, based on his and the other certifying officer's "most recent evaluation of [ICFR]," they had disclosed to QSGI's external auditors all significant deficiencies, "in the design or operation of [ICFR] which are reasonably likely to adversely affect [QSGI's] ability to record, process, summarize and report financial information." Omitted from the certification attached to the Form 10-K, but included in the certification attached to the Form 10-Q, were Sherman's certifications to the effect that the other certifying officer and he: (1) had been responsible for establishing and maintaining ICFR and designing, or supervising others in the design of, ICFR; and (2) had designed, or caused to be designed, such ICFR.

27. Sherman's certifications were false because: (1) he had not participated in designing, establishing, or maintaining ICFR, and had not evaluated ICFR; (2) he and others had on occasion circumvented QSGI's internal controls in accelerating

improperly the recognition of accounts receivable and inventory; and (3) the other certifying officer and Sherman had not made the referenced disclosures to the external auditors.

28. Sherman knew, or was reckless in not knowing, that his certifications were materially false and misleading.

29. As mentioned, Sherman signed the 2008 Form 10-K and Form 10-K/A, which were filed with the Commission. Sherman also signed the Form 10-Q for the first quarter of 2009 in his capacity as CEO and Chairman of the Board of Directors, which was filed with the Commission on May 14, 2009.

H. VIOLATIONS

30. As a result of the conduct described above, Sherman violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of any security involving: a) the use of any device, scheme, or artifice to defraud; b) the making of material misrepresentations or omissions; and c) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

31. As a result of the conduct described above, Sherman caused QSGI's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B), which require reporting issuers to make and keep accurate books and records and devise and maintain effective internal accounting controls, respectively.

32. As a result of the conduct described above, Sherman violated Exchange Act Section 13(b)(5), which prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account subject to Exchange Act Section 13(b)(2). Sherman also violated Exchange Act Rule 13b2-1, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Exchange Act Section 13(b)(2).

33. As a result of the conduct described above, Sherman violated Exchange Act Rule 13b2-2, which prohibits any director or officer of an issuer from, directly or indirectly: (a) making or causing to be made a materially false or misleading statement; or (b) omitting or causing another person to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with financial statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission.

34. As a result of the conduct described above, Sherman violated Exchange Act Rule 13a-14(a), which requires that an issuer's principal executive officer, or

person's performing similar functions, certify each periodic report containing financial statements filed by an issuer pursuant to Section 13(a) of the Exchange Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 10(b), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder;

C. What, if any, remedial action is appropriate against Respondent, including, but not limited to, civil penalties pursuant to Section 21B(a) of the Exchange Act;

D. Whether, pursuant to Section 21C(f) of the Exchange Act, Respondent should be prohibited, conditionally or unconditionally, and permanently or for such period of time as it shall determine, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act; and

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72722 / July 30, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3572 / July 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15991

In the Matter of **EDWARD L. CUMMINGS, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Edward L. Cummings, CPA ("Respondent" or "Cummings") pursuant to Sections 4C[1] and 21C of the

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.[2]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3] that:

A. SUMMARY

During the 2008 and first quarter 2009 reporting periods (the "relevant period"), QSGI Inc. ("QSGI" or the "Company") was a reseller of and maintenance services provider in relation to used computer equipment. Cummings, who served as QSGI's Chief Financial Officer prior to becoming its Vice President of Finance and Controller in 2009, was aware during the relevant period of deficiencies in and the circumvention of internal controls relating to inventory and the resulting falsification of the Company's books and records. He also participated in the decision, on occasion during the relevant period, to improperly accelerate by up to a week recognition on QSGI's books and records of accounts receivable and receipt of inventory in order to increase the borrowing base available under a revolving credit facility with the Company's chief creditor. Cummings withheld this information from the Company's external auditors in connection with their audit of the financial statements for the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009, and made affirmative

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2 Rule 102(e)(1)(iii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

3 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

misrepresentations and statements that were misleading as a result of his omission of information, including in management representation letters, about the design, maintenance, and operation of internal controls. Further, Cummings signed a Form 10-K for the 2008 fiscal year containing management's report on internal control over financial reporting ("ICFR"), as required by Section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") and Exchange Act Rule 13a-15(c), which falsely represented that the Company's Chief Executive Officer had participated in assessing the effectiveness of the Company's ICFR. Cummings also signed certifications required under Section 302 of the Sarbanes-Oxley Act and Rule 13a-14 of the Exchange Act falsely representing that the other certifying officer, the CEO, and Cummings had evaluated ICFR and, based on their evaluation, disclosed all significant deficiencies to the auditors. Cummings signed the Forms 10-K and 10-Q filed with the Commission to which the certifications were attached.

B. RESPONDENT

Cummings co-founded QSGI Inc. in 2001. He thereafter served as Chief Financial Officer and Treasurer until May 2009, when he became Vice President of Finance and Controller. Cummings also served as a Director from February 2004 until October 2008. He was terminated in September 2009 following the Company's filing for Chapter 11 bankruptcy in July 2009, but continued until June 2011 to work as a financial consultant to the Company while it reorganized. Cummings was licensed as a certified public accountant in the State of Pennsylvania in 1977; his license has been inactive since 1979.

C. FACTS

1. Cummings' Awareness of Deficiencies In and Circumvention of Inventory Controls

a. QSGI is a Delaware corporation headquartered during the relevant period in West Palm Beach, Florida. Its common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is quoted on the OTC Link (formerly "Pink Sheets") operated by OTC Markets Group.

b. From May 2004 through the time QSGI filed for bankruptcy in July 2009, QSGI maintained inventory principally at facilities in New Jersey and Minnesota. The New Jersey inventory, which comprised 50% of the Company's reported gross inventory and 55% of its reported net inventory, after reduction for reserves, as of the close of its fiscal year ended December 31, 2008, was comprised of laptops, monitors, and other consumer electronics and components. The Minnesota inventory, which comprised 40% of QSGI's reported gross inventory and 35% of its reported net inventory, after reduction for reserves, as of the close of QSGI's 2008 fiscal year, was comprised chiefly of servers, mainframes, and component parts.

c. QSGI experienced recurring inventory control problems, particularly with its Minnesota operations. Throughout 2008 until the Company filed for bankruptcy in mid-2009: (1) certain inventory received into QSGI facilities was shipped out again without being entered into the Company's books and records; and (2) items were removed from physical inventory without being relieved from inventory on the books and records. With regard to the latter, personnel not only removed component parts from the physical inventory of component parts without relieving the items from recorded inventory, but occasionally stripped component parts from operating systems which continued to be recorded on the books and records as intact systems. These component parts were then sold by the Company or used for the Company's maintenance services.

d. These internal control problems resulted in the falsification of QSGI's books and records relating to QSGI's inventory. *See* Accounting Standards Codification 330 - Inventory.

e. These inventory control problems emerged at the Minnesota facility beginning in 2007 for several reasons. First, a manufacturer's policy of curtailing resellers' ability to modify machines to customers' specifications hastened QSGI's shift from selling machines to selling parts and providing repair and maintenance services. This, in turn, contributed to the problem in Minnesota of personnel removing component parts from operating systems without any corresponding adjustment to the Company's books and records. The units continued to be recorded on the books and records as intact systems. Second, key personnel, including accounting personnel, left the Minnesota operations in late 2007. Personnel designated to replace the departed accounting staff lacked an accounting background and failed to fully carry out their responsibilities. Third, while QSGI management, including Cummings, had undertaken to design, document, and implement internal controls to come into compliance with the federal securities laws, such efforts were not begun in earnest in Minnesota until late 2007, after the departure of key personnel. Prior to that point, QSGI senior management had accorded Minnesota personnel a fair amount of autonomy, including using an accounting system that differed from the one used in New Jersey.

f. Efforts to introduce new controls to the Minnesota operations during the 2008 fiscal year largely failed. This was due to a failure to design procedures taking into account the existing control environment, including the qualifications and experience level of persons employed to handle accounting. Training, for example, either did not take place or was inadequate. Additionally, attempts to monitor compliance on an ongoing basis were inadequate. As a result, circumvention of the controls in the Minnesota operations occurred regularly.

g. From October 2004 until he was terminated in September 2009, Cummings participated in the design and implementation of internal controls directed at bringing QSGI into compliance with the federal securities laws. Notwithstanding his and others' efforts, Cummings was aware during the relevant period of ongoing deficiencies in and circumvention of internal controls relating to inventory, particularly in the Minnesota operations.

h. In the final days of the 2008 fiscal year, QSGI senior management, including Cummings, communicated openly amongst themselves about the failed implementation, including training in, and circumvention of controls introduced to the Minnesota office earlier in the year. They commonly agreed that corrective action was needed which, given the timing, could not be undertaken until 2009.

i. Cummings was aware that the problems continued throughout the first quarter ended March 31, 2009.

2. Cummings' Participation in Improper Acceleration of Recognition of Inventory and Accounts Receivable

a. QSGI reported net losses in each of the four fiscal years from 2005 through 2008. As a result, the external auditors issued "going concern" opinions included in the Forms 10-K for the fiscal years ended December 31, 2007 and 2008, which stated that the losses raised substantial doubts about the Company's ability to continue as a going concern. In the circumstances, QSGI's ability to procure funds was critical to its continued operation.

b. In mid-2008, QSGI entered into a revolving credit facility with its chief creditor. QSGI's inventory and accounts receivable factored into the weekly calculation of the borrowing base under the revolving credit facility. A QSGI employee calculated the borrowing base and reported it to Cummings and another officer for their review prior to transmission to the chief creditor.

c. On occasion during the relevant period, the weekly calculation would show that QSGI had exceeded its borrowing limit or would not be able to borrow enough to continue operations through the upcoming week. In order to increase the borrowing base, recognition of accounts receivable and/or the receipt of product into inventory were improperly accelerated on QSGI's books and records. Each time acceleration occurred it was by a matter of days up to approximately a week in advance of when all conditions for recognition would be appropriate under generally accepted accounting principles. *See* Accounting Standards Codification 330 - Inventory and 310 - Accounts Receivable.

d. Once the accounts receivable and/or receipt of inventory were improperly recorded on QSGI's books and records, the QSGI employee would recalculate the borrowing base using the new figures.

e. Cummings participated in and was aware of the decision to improperly accelerate by up to a week the recognition of accounts receivable and the receipt of product into inventory for purposes of recalculating the borrowing base. He signed the borrowing base certificates reflecting the recalculated numbers. Cummings was not aware of any acceleration of accounts receivable or inventory from one public reporting period to another that would have materially affected the accuracy of the financial statements.

3. Cummings Misled QSGI's Auditors

a. Cummings acted as principal liaison between the Company and the external auditors during the relevant period. At no time did he disclose, or direct anyone else to disclose, to QSGI's external auditors the deficiencies in and circumvention of internal controls and the improper acceleration of accounts receivable and inventory recognition described above.

b. To the contrary, he made misrepresentations, and statements that were misleading as a result of his omission of information, to the external auditors. In connection with the external auditor's audit of the financial statements included in QSGI's Form 10-K for the fiscal year ended December 31, 2008 and its review of the financial statements included in the Form 10-Q for the first quarter ended March 31, 2009, Cummings signed management representation letters. In the management representation letter relating to the 2008 Form 10-K, Cummings omitted to mention the existence of significant deficiencies in the design or operation of ICFR. Further, in connection with the auditors' testing of internal controls during the audit of the 2008 financial statements, Cummings orally represented to them that key controls were in place and that there were no significant deficiencies with QSGI's ICFR. In the management representation letter relating to the first quarter Form 10-Q, he falsely stated that he had disclosed to the auditors all significant deficiencies in the design or operation of the Company's ICFR.

c. Had Cummings disclosed to the external auditors the deficiencies in and the circumvention of inventory controls and the improper acceleration of accounts receivable and inventory recognition described above, the auditors would have changed the nature, timing, and extent of their procedures in conducting the audit of the financial statements for the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009.

4. **Cummings' False Representations in Management's Report on ICFR**

a. QSGI's Form 10-K for the fiscal year ended December 31, 2008 included the Company management's report on ICFR, as required by Section 404 of the Sarbanes-Oxley Act and Exchange Act Rule 13a-15(c).

b. The management report falsely represented that QSGI's management, with the participation of QSGI's CEO and Cummings, had evaluated QSGI's ICFR as of December 31, 2008 using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control – Integrated Framework. In fact, the CEO had not participated and was unfamiliar with the referenced framework.

c. Cummings signed the Form 10-K in his capacity as CFO and Treasurer.

5. **Cummings' False Sarbanes-Oxley Act Section 302 Certifications**

a. Pursuant to Sarbanes-Oxley Act Section 302 and Exchange Act Rule 13a-14, Cummings signed certifications which were attached to QSGI's Forms 10-K and 10-Q for the periods ended December 31, 2008 and March 31, 2009, respectively.

b. Cummings certified in each that the other certifying officer and he had disclosed, based on their "most recent evaluation of [ICFR]," to QSGI's external auditors all significant deficiencies, "in the design or operation of [ICFR] which are reasonably likely to adversely affect [QSGI's] ability to record, process, summarize and report financial information." Improperly omitted from the certification attached to the Form 10-K, but included in the certification attached to the Form 10-Q, were Cummings' certifications to the effect that the other certifying officer and he: (1) had been responsible for establishing and maintaining ICFR and designing, or supervising others in the design of, ICFR; and (2) had designed, or caused to be designed, such ICFR.

c. Cummings' certifications were false because: (1) the other certifying officer, the Company CEO, had not participated in designing, establishing, or maintaining ICFR, and had not evaluated ICFR; (2) Cummings and others had on occasion circumvented QSGI's internal controls in accelerating improperly by up to a week the recognition of accounts receivable and inventory for purposes of maximizing the borrowing base under a revolving credit facility with the Company's chief creditor; and (2) the other certifying officer and Cummings had not made the referenced disclosures to the external auditors.

6. Violations

a. Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of any security, a) the use of any device, scheme, or artifice to defraud; b) the making of material misrepresentations or omissions; and c) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. A finding of scienter is required to establish a violation. *Aaron v. SEC*, 446 U.S. 680, 697 (1980). The three subdivisions of Rule 10b-5 should be considered mutually supportive, rather than mutually exclusive. *See Cady, Roberts & Co.*, 40 S.E.C. 907, 913 (1961) (noting that "a breach of duty of disclosure may be viewed as a device or scheme, an implied misrepresentation, and an act or practice, violative of all three subdivisions").

b. "For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Group, Inc. v. First Derivatives Traders*, 131 S. Ct. 2296, 2302 (2011).

c. Courts construe the "in connection with" requirement flexibly to effectuate its remedial purposes. *SEC v. Zandford*, 535 U.S. 813, 819 (2002). Any statement that is "reasonably calculated to influence the investing public" satisfies the "in connection with" requirement. *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833, 861-62 (2d. Cir. 1968). When the fraud alleged involves public dissemination in a document on which an investor would presumably rely, the "in connection with" requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation. *SEC v. Rana Research*, 8 F.3d 1358, 1362 (9th Cir. 1993)).

d. Information is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). "It is well-settled that information impugning management's integrity is material to shareholders." *United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010).

e. Scienter is the "mental state embracing the intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter can be established by showing knowing misconduct or severe recklessness, which is defined as "an extreme departure of the standards of ordinary care… which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982).

f. As discussed above, Cummings made materially false and misleading statements in his certifications attached to the Forms 10-K and 10-Q for the fiscal year ended December 31, 2008 and the quarter ended March 31, 2009, respectively, to the effect that the other certifying officer and he had: (1) evaluated QSGI's ICFR; and (2) disclosed to the external auditors all significant deficiencies which were reasonably likely to adversely affect QSGI's ability to record, process, summarize and report financial information. Further, Cummings signed the 2008 Form 10-K in his capacity as an officer which included a management's report on ICFR which falsely stated that QSGI's CEO had participated with management, in assessing ICFR pursuant to a specified framework. Cummings knew, or was reckless in not knowing, that these statements were false. As a result of the foregoing, Cummings violated Section 10(b) of the Exchange Act and Rule 10b-5(a), (b), and (c) thereunder.

g. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires reporting issuers to devise and maintain effective internal accounting controls. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly falsify any such book, record, or account or circumvent internal controls. Rule 13b2-1 also prohibits the falsification of any book, record, or account subject to Section 13(b)(2)(A).

h. As discussed above, deficiencies in the design and operation of internal controls, particularly relating to inventory in the Minnesota operations, had persisted at QSGI. During the relevant period, these deficiencies included: (1) certain inventory received into QSGI facilities being shipped out again without being entered into the Company's books and records; (2) items being removed from physical inventory without being relieved from inventory on the books and records; (3) recognition of inventory and accounts receivable being improperly accelerated by up to a week; and (4) the failure to disclose significant deficiencies to the external auditors, and the provision of false management representation letters to the external auditors in connection with their audit of the 2008 fiscal year and review of the first quarter 2009 financial statements. The deficiencies were reflective of a failure to design internal controls mindful of the control environment, including the qualifications of personnel tasked with accounting functions, and the circumvention of such controls as existed. As a result, QSGI failed to devise and maintain effective internal controls and to make and keep books, records and accounts that accurately and fairly reflected the transactions and dispositions of the Company's assets. Cummings caused these violations by failing to design effective internal controls; circumventing controls that existed; and withholding information from the external auditors and making false representations or material omissions in management representation letters. As a result of the actions described above, Cummings caused QSGI's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B), and violated Exchange Act Section 13(b)(5) and Rule 13b2-1 thereunder.

i. Exchange Act Rule 13b2-2 prohibits any director or officer of an issuer from directly or indirectly making or causing to be made a materially false or misleading statement or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with financial statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission.

j. As discussed above, Cummings omitted from a management representation letter to the external auditors in connection with their audit of the 2008 financial statements the existence of significant deficiencies in internal controls, while orally representing to the auditors in connection with the same audit that he had disclosed all such significant deficiencies. He affirmatively misrepresented in a management representation letter relating to the external auditors' review of the first quarter 2009 financial statements that he had disclosed all significant deficiencies in internal controls. As a result of the actions described above, Cummings violated Exchange Act Rule 13b2-2.

k. Exchange Act Rule 13a-14(a), which the Commission promulgated in response to Section 302 of the Sarbanes-Oxley Act, requires that the issuer's principal executive officer and principal financial officer certify each periodic report containing financial statements filed by an issuer pursuant to Section 13(a) of the Exchange Act. The certifications are included as exhibits to the Forms 10-K and 10-Q.

l. Item 601(b)(31) of Regulation S-K prescribes the wording. Amongst other things, it requires the certifying officer to certify that the other certifying officer(s) and he/she, "are responsible for establishing and maintaining . . . . internal control over financial reporting . . . ," and (1) ". . . . [d]esigned such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision . . . . ; and (2) " . . have disclosed, based on [their] most recent evaluation of internal control over financial reporting, to the registrant's auditors . . . [a]ll significant deficiencies . . . in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information . . . ."

m. Cummings falsely certified in the certifications attached to the Forms 10-K and 10-Q for the fiscal year ended December 31, 2008 and the quarter ended March 31, 2009, respectively, that the other certifying officer, the Company's CEO, and he had: (1) evaluated QSGI's ICFR; and (2) disclosed all significant deficiencies to the external auditors which were reasonably likely to adversely affect QSGI's ability to record, process, summarize, and report financial information. As a result, Cummings violated Exchange Act Rule 13a-14 by signing false Section 302 certifications.

n. Pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Cummings willfully violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2.

7. Findings

Based on the foregoing, the Commission finds that Cummings: (a) willfully violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 promulgated thereunder; and (b) caused QSGI's violations of 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Cummings' Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(b)(5), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 promulgated thereunder.

B. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five (5) years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

   a. Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act, and such registration continues to be effective;

   b. Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

   c. Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

   d. Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

E. Respondent is prohibited for a period of five (5) years from the date of the Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

F. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $23,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Cummings as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72726 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15993

In the Matter of **Accredited Business Consolidators Corp.,** **AsherXino Corp.,** **Bakers Footwear Group, Inc.,** **Card Activation Technologies Inc.,** **High Plains Gas, Inc., and** **Pacific Copper Corp.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Accredited Business Consolidators Corp., AsherXino Corp., Bakers Footwear Group, Inc., Card Activation Technologies Inc., High Plains Gas, Inc., and Pacific Copper Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Accredited Business Consolidators Corp. (CIK No. 933425) is a Pennsylvania corporation located in Managua, Nicaragua with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Accredited Business Consolidators is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $1,404 for the prior three months. As of June 30, 2014, the company's stock (symbol "ACDU") was quoted on OTC Link (previously, "Pink

Sheets") operated by OTC Markets Group, Inc. ("OTC Link"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. AsherXino Corp. (CIK No. 700890) is a forfeited Delaware corporation located in Atlanta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). AsherXino is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2012, which reported a net loss of $41,721 for the prior three months. As of June 30, 2014, the company's stock (symbol "AXNO") was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Bakers Footwear Group, Inc. (CIK No. 1171032) is a dissolved Missouri corporation located in St. Louis, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bakers Footwear Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 28, 2012, which reported a net loss of $1,051,042 for the prior thirteen weeks. As of June 30, 2014, the company's stock (symbol "BKRSQ") was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). On October 3, 2012, the company filed a Chapter 11 petition, which was subsequently converted to Chapter 7, in the U.S. Bankruptcy Court for the Eastern District of Missouri, and the case was still pending as of May 21, 2014.

4. Card Activation Technologies, Inc. (CIK No. 1384522) is a Delaware corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Card Activation Technologies is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2012, which reported a net loss of $220,391 for the prior nine months. As of June 30, 2014, the company's stock (symbol "CDVT") was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. High Plains Gas, Inc. (CIK No. 1327195) is a Nevada corporation located in Gillette, Wyoming with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). High Plains Gas is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which reported a net loss of $39,004,193 for the prior nine months. As of June 30, 2014, the company's stock (symbol "HPGS") was quoted on OTC Link, had eleven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Pacific Copper Corp. (CIK No. 1387522) is a void Delaware corporation located in Tucson, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pacific Copper is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 2012, which reported a net loss of $395,604 for the prior six months. As of June 30, 2014, the company's stock (symbol "PPFP") was

quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and/or 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 31, 2014

In the Matter of **Accredited Business Consolidators Corp.,** **AsherXino Corp.,** **Bakers Footwear Group, Inc.,** **Card Activation Technologies, Inc.,** **High Plains Gas, Inc., and** **Pacific Copper Corp.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accredited Business Consolidators Corp. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AsherXino Corp. because it has not filed any periodic reports since the period ended June 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bakers Footwear Group, Inc. because it has not filed any periodic reports since the period ended April 28, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Card Activation

Technologies, Inc. because it has not filed any periodic reports since the period ended June 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of High Plains Gas, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pacific Copper Corp. because it has not filed any periodic reports since the period ended April 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 31, 2014, through 11:59 p.m. EDT on August 13, 2014.

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72727 / July 31, 2014

WHISTLEBLOWER AWARD PROCEEDING File No. 2014-8

In the Matter of the Claim for an Award

in connection with

Redacted
(Administrative Proceeding File No. Redacted)
Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On August 27, 2013, the Claims Review Staff (CRS) issued a Preliminary Determination related to the Notice of Action Redacted The Preliminary Determination recommended that Claimant's whistleblower award claim for an award under Section 21F of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78u-6, be denied. Although the record demonstrated that Claimant provided original information to the Commission that led to the successful enforcement of Redacted (Admin. File No. Redacted) (the "Covered Action"), the Preliminary Determination recommended that Claimant's claim be denied because -- information did not appear to have been "voluntarily" provided within the definition of Rule 21F-4(a)(ii), because of a prior inquiry into the matter conducted by a self-regulatory organization ("SRO").

Claimant subsequently filed a response to the Preliminary Determination pursuant to Rule 21F-10(e), 17 C.F.R. 240.21F-10(e), in which, among other things, -- set forth a detailed chronology of the relevant events. Claimant's detailed description of -- conduct persuades us that -- engaged in diligent efforts to correct and to bring to light the underlying misconduct in this case.[1] Based on our fuller understanding of the relevant events, which we consider to be materially significant extenuating circumstances, we therefore believe it appropriate in the public interest and consistent with the protection of investors to waive the "voluntary" requirement of Rule 21F-4(a) on the unique

[1] Among the highly unusual circumstances that Claimant detailed, and that we otherwise take note of, are: (1) prior to the enactment of the Dodd-Frank whistleblower award program and the concomitant anti-retaliation protections, Claimant was working aggressively internally at Redacted to bring the securities law violations to the attention of appropriate personnel and to obtain corrective action for the benefit of investors; (2) the SRO inquiry originated from information a third party provided to the SRO that in part described Claimant's role in identifying the issue that gave rise to the violations and --- effort to obtain corrective action; (3) Claimant was led to believe by Redacted early on during the SRO inquiry that Redacted had provided the SRO with all of the materials that Claimant had developed for his use in internal efforts to obtain corrective action; and (4) Claimant's persistent efforts in reporting to the Commission once --- learned that the SRO inquiry had been closed and that Redacted internal efforts would not protect investors from future harm.

facts of this award claim and to make an award to Claimant.[2] Although not an independent basis for our conclusion, we nonetheless are mindful that the Claimant's interactions with the SRO occurred prior to either our proposal or adoption of Rule 21F-4(a), which created incentives, as part of our whistleblower program, for whistleblowers to report original information to the Commission before they are approached by an SRO in connection with an investigation or an examination.

Further, we conclude that the award should be --- of the total monetary sanctions collected in the Covered Action. In arriving at this conclusion, we considered the factors set forth in Rule 21F-6, 17 C.F.R. 240-21F-6, in relation to the facts and circumstances of the Claimant's application. We believe that this award appropriately recognizes the significance of the information that the Claimant provided to the Commission, the efforts the Claimant made both to protect investors and to report the violation internally, and the personal and professional injuries that the Claimant suffered in bringing the violations here to light.

Accordingly, upon due consideration under Rule 21F-10(h), 17 C.F.R. § 240.21F-10(h), it is hereby ORDERED that Claimant shall receive an award of --- of the monetary sanctions collected in the above-referenced covered action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

[2] *See* Section 36(a) of the Exchange Act.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3886 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15995

In the Matter of **Neal V. Goyal,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Neal V. Goyal ("Goyal").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent Goyal consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Goyal owned, managed and controlled two investment advisers named Blue Horizon Asset Management, LLC and Caldera Advisors, LLC. Goyal passed the Series 65 Uniform

Investment Adviser exam in 2005, but he does not currently hold any securities licenses. He owns and controls Caldera Investment Group, Inc. Goyal, 33 years old, is a resident of Chicago, Illinois.

2. On May 28, 2014, a judgment was entered by consent against Goyal, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) and Rule 206(4)-8 thereunder of the Investment Advisers Act of 1940 ("Advisers Act"), in the civil action entitled Securities and Exchange Commission v. Neal V. Goyal, et al., Civil Action Number 1:14-CV-03900, in the United States District Court for the Northern District of Illinois.

3. The SEC's complaint, filed on May 28, 2014, alleged that between January 2006 and May 2014, Goyal raised more than $11.4 million from investors by misleading them into believing that the private funds he managed would invest in securities following a "long-short" trading strategy. While he represented that the funds invested in equities and significantly outperformed the market, Goyal never invested the vast majority of the money he raised from investors, and the limited trading that Goyal did perform was unsuccessful and resulted in significant losses. Goyal disguised his fraud by sending investors fictitious account statements grossly overstating his performance and, in Ponzi-scheme fashion, by using later investors' money to meet the distribution requests of prior investors. Among other things, Goyal misused investor funds to make down-payments and pay the mortgages on two homes that he purchased and to pay business expenses. The SEC further alleged in its complaint that Goyal misappropriated investor money to invest in a Chicago tavern, fund two children's clothing boutiques that his wife operates in Chicago and to purchase artwork, electronics and furniture for both his home and office.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Goyal's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act Respondent Goyal be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Jill M. Peterson
Assistant Secretary

Commissioner Gallagher
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9620 / July 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72729 / July 31, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3884 / July 31, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31195 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15790

In the Matter of

MICHAEL A. HOROWITZ

and

MOSHE MARC COHEN,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO MICHAEL A. HOROWITZ

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") as to Michael A. Horowitz ("Horowitz")[1]

[1] On March 13, 2014, the Commission instituted public administrative and cease-and desist proceedings pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, against Horowitz and co-respondent Moshe Marc Cohen ("Cohen").

II.

Respondent Horowitz has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Respondent admits only the facts set forth in Annex A attached hereto and acknowledges that his conduct as set forth in Annex A violated the federal securities laws, admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Michael A. Horowitz ("Order"), as set forth below.

III.

On the basis of this Order and Horowitz's Offer, the Commission finds[2] that:

SUMMARY

1. These proceedings arise from a fraudulent scheme to profit from the imminent deaths of terminally ill hospice and nursing home patients through the purchase and sale of more than $80 million in deferred variable annuities ("variable annuities") between July 2007 and at least February 2008.

2. The scheme was orchestrated by Respondent Horowitz, then a registered representative of a large broker-dealer firm ("Broker-Dealer 1"). Horowitz, together with others, made material misrepresentations and used deceptive devices to obtain the personal health and identifying information ("ID and Health Data") of terminally ill hospice and nursing home patients in order to designate them as annuitants on variable annuity contracts that Horowitz marketed to wealthy investors. Horowitz marketed these variable annuities – which are designed by their issuers to be long-term investment vehicles – as opportunities for short-term gains with a hedge against market losses. Horowitz recruited Respondent Cohen to facilitate the sale of additional "stranger-owned" annuities and they each obtained their firms' approval of variable annuity sales by making material misrepresentations and omissions on trade tickets, customer account forms and/or point-of-sale forms, which the broker-dealer principals used to conduct investment suitability and related reviews. As a result of the Respondents' fraudulent acts and practices, certain insurance companies unwittingly issued variable annuities that they would not otherwise have sold. The annuities sold during the scheme – which included five annuities sold to Horowitz's close relatives for profits in excess of $900,000 – generated lucrative upfront sales commissions for the Respondents, with Horowitz receiving more than $300,000 and Cohen receiving more than $700,000 in commissions.

[2] The findings herein are made pursuant to Horowitz's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. By virtue of the foregoing conduct and as alleged further herein, Respondent Horowitz, directly or indirectly, singly or in concert, engaged in acts, practices, schemes and courses of business that violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Respondent Horowitz also violated Sections 17(a)(1) and (2) of the Securities Act, and aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. In addition, Respondent Horowitz violated Section 15(a) of the Exchange Act.

RESPONDENTS

4. **Michael A. Horowitz**, age 39, the scheme architect, resides in Los Angeles, California. Between June 2000 and August 2008, Horowitz was a registered representative at Broker-Dealer 1. He resigned during Broker-Dealer 1's investigation into his sale of the variable annuities at issue. Horowitz holds Series 7 and 66 licenses.

5. **Moshe Marc Cohen**, age 38, was a registered representative recruited to the scheme by Horowitz, and resides in Brooklyn, New York. He is not currently associated with any SEC-registered entity. From 2003 to February 2008, Cohen was a registered representative at Broker-Dealer 3. Broker-Dealer 3 terminated Cohen's employment on February 25, 2008 after he refused to cooperate with Broker-Dealer 3's internal review of Cohen's variable annuity sales at issue. Cohen held Series 6, 7, 24 and 63 licenses.

OTHER RELEVANT ENTITIES

6. **Broker-Dealer 1** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

7. **Broker-Dealer 2** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

8. **Broker-Dealer 3** is a broker-dealer and investment adviser registered with the Commission and headquartered in Oakdale, Minnesota.

9. **Raphael Health** was established by Harold Ten ("Ten")[3] in or about June 2007, as a registered d/b/a of an existing non-profit 501(c)(3) organization. Also in or about June 2007, Ten set up a web page for Raphael Health, which described Raphael Health as an organization "dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity." In fact, the purpose of Raphael Health was to obtain ID and Health Data of terminally ill patients for use in the purchase and sale of variable annuities.

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[3] On March 13, 2014, the Commission instituted settled public administrative and cease-and desist proceedings against Ten, which included collateral, investment company and penny stock bars, disgorgement, a civil penalty, and a cease-and-desist order. Exchange Act Release No. 71712, Admin. Proc. File No. 3-15787 (Mar. 13, 2014).

THE RESPONDENTS' SCHEME

Variable Annuities

10. Variable annuities are designed to serve as long-term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits[4] and/or bonus credits.[5] Horowitz solicited wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

Horowitz's "Stranger-Owned" Variable Annuities Investment Strategy

11. In or about May 2007, Respondent Horowitz devised the scheme that is the subject of this proceeding after learning about the features of certain variable annuity contracts offered by an annuity issuer ("VA Issuer").

12. In particular, Horowitz learned that, unlike traditional life insurance, these variable annuity contracts—as long as they were purchased under a certain dollar threshold—required neither a physical examination of, nor proof of an "insurable interest" in, the "annuitant," *i.e.*, the person whose death would trigger the products' payout provisions. Horowitz further determined that with respect to certain of the VA Issuer's deferred variable annuity products: (i) the VA Issuer provided an immediate "bonus credit" of up to 5% of the amount invested, which was credited to the contract owner's investment account; (ii) the contract owner could invest his or her premiums in mutual funds available under the contract; (iii) the annuities contained death benefit options; (iv) although substantial "surrender charges" were ordinarily assessed if the annuities were liquidated within the first 7-10 years, such charges were typically not incurred in the event of a death benefit payout; and (v) even if the annuitant died before the "surrender charge" period had run, the VA Issuer would not "claw back" any of the sales commissions it paid to the selling representative.

13. Horowitz developed a strategy to exploit these benefits by using terminally ill hospice and nursing home patients as the contract annuitants and soliciting wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

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[4] The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant's death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio's value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract "annuitant." However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

[5] A bonus credit is a sum of money immediately credited to the contract owner's investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an initial investment of $1 million and received "bonus credits" that increased the value of their annuity by 5% ($50,000) to $1,050,000.

14. In each of these contracts, a terminally ill hospice or nursing home patient was designated as the contract annuitant. At least 16 terminally ill hospice patients were designated as annuitants in more than 50 variable annuities sold by Horowitz, Cohen, or other registered representatives recruited to the scheme. All of the hospice patients were residents of southern California or Chicago, Illinois.

15. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term. As part of his pitch to investors, Horowitz told them that he would supply the annuitants, with investors needing to furnish only their funds.

16. These "stranger annuitants" likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the scheme. Instead, each of the contracts directed these benefits be paid to one of the investor's family members or relatives, or to a family trust created by the investor.

17. Anticipating that the annuitants would soon die, triggering death benefit payouts in the annuity contracts, Horowitz advised his customers to invest their premiums aggressively because if the value of their portfolio increased, they would receive the portfolio value as the death benefit payout. If the value of their portfolio decreased, the death benefit nonetheless guaranteed them a payout equal to the value of their premiums paid minus any withdrawals. Horowitz also advised his customers to invest large sums of money in each annuity they purchased to maximize their "bonus credit."

18. Horowitz employed at least two varieties of fraud in carrying out his sale of "stranger-owned" annuities. First, Horowitz and others fraudulently obtained and used the ID and Health Data of certain unwitting terminally ill hospice and nursing home patients who were designated as annuitants. Second, Horowitz and Cohen falsified broker-dealer trade tickets, customer account forms and/or point-of-sale forms (including suitability questionnaires) to obtain supervisory approval of the annuities that were sold pursuant to the scheme. As a result of these fraudulent acts and practices, certain insurance companies, including VA Issuer, unwittingly issued variable annuities that they would not otherwise have sold.

HOROWITZ OBTAINS CONFIDENTIAL ID AND HEALTH DATA THROUGH DECEPTIVE PRACTICES

19. To implement his plan, Horowitz needed a ready supply of terminally ill persons, unrelated to the investors, to use as annuitants in variable annuity sales. Horowitz recruited certain individuals ("Annuitant Finders") to identify the terminally ill persons to be used as annuitants. Working with Horowitz, these Annuitant Finders engaged in a scheme to obtain the patients' confidential ID and Health Data, which they then fraudulently misused. Horowitz needed patients' Health Data to confirm that the individuals he designated as annuitants had a terminal medical diagnosis. He needed their ID Data (including social security number and date of birth) to

designate them as annuitants and to submit death benefit claims to the issuers whose annuities he sold.

The California Annuitants

20. In May 2007, Horowitz approached Ten and described his stranger-owned annuities scheme to him. Because Ten worked at a non-profit 501(c)(3) organization ("Charity"), Horowitz asked Ten to assist him with identifying terminally ill patients and obtaining their confidential ID Data.

21. After a series of closed-door meetings between Horowitz and Ten at Charity's offices in May 2007, Ten told his assistant that he was going to start a new charity, Raphael Health. Raphael Health was purportedly going to focus on providing charitable assistance exclusively to hospice care patients.

22. Raphael Health was used in the scheme to obtain patient ID and Health Data. On June 1, 2007, Ten filed a fictitious name certificate with the State of California, allowing one of his existing charities to do business under Raphael Health's name.

23. Ten created a website for Raphael Health and set up Raphael Health email accounts. The Raphael Health webpage stated that Raphael Health was:

> an organization dedicated to helping patients with a life limiting illness to live their remainder days in comfort and dignity.... Through the generosity of private and corporate philanthropists Raphael Health helps patients who[] have chosen hospice care and are at home or in a facility....

24. In reality, Raphael Health had no private or corporate donors, and its true purpose was to obtain patient ID and Health Data for Horowitz's use in selling stranger-owned annuities. Raphael Health's website failed to disclose these facts.

25. In July 2007, Ten opened a bank account in the name of Raphael Health, and funded it with several thousand dollars from his personal bank account. These funds were to be used for the charitable donations Ten planned to offer hospice patients as part of the plan to obtain their ID and Health Data.

26. Beginning in June 2007, Ten held Raphael Health out as a charity devoted to providing assistance to hospice patients. Ten solicited hospice care providers in Los Angeles, San Francisco and New Orleans by touting Raphael Health's purported charitable services. In contemporaneous emails to those hospice care providers, Ten and his assistant described Raphael Health as a "non-profit 501(c)(3) organization."

27. In June 2007, Ten met with the Director of Development of a southern California hospice care provider ("HCP"). During the June 2007 meeting, Ten told HCP's Director of Development that Raphael Health

> was an organization of some large, very high profile donors, the type of donors whose names are often on the sides of buildings at Universities, that sort of donor, Universities, hospitals. And that in this instance, they wanted to give and remain anonymous in that gift so that they had established Raphael Health….[Ten] indicated that they would like to see the patient, they would like to meet the patient. He, specifically. [*sic*] And the purpose for that was that they could tell – he could tell their donors or his donors who those individuals were that they were actually meeting – so he would be able to tell a story to help receive other donations to continue those donations to come into the individual patient requests that they were filling.

28. Ten's statements to HCP's Director of Development were false because, among other reasons, Raphael Health had no donors other than Ten.

29. Ten implied that there were conditions on the purported aid to be offered. First, only HCP hospice patients (*i.e.*, those who had been diagnosed with terminal illnesses and were receiving only palliative care in their home), as opposed to other HCP patients receiving in-home curative care or treatment, were eligible for Raphael Health's donations. Second, Ten capped the amount to be donated per patient at between $250-$500. Third, Raphael Health required that HCP provide it with the following information concerning any candidate for a donation: (i) the patient's name and address; (ii) the patient's date of birth; (iii) the patient's social security number; (iv) the patient's medical diagnosis; and (v) confirmation that the patient was receiving hospice care. This was the information that Respondent Horowitz needed to designate the hospice patients as annuitants. Finally, Ten conditioned the donations on his right to visit the HCP patient in question. Ten told HCP that he wanted to be able to tell his donors each patient's "story" to help raise additional donations for other patients. After visiting Raphael Health's website to confirm the legitimacy of the charity, the HCP administrator—grateful for what he understood to be Raphael Health's purely charitable donations to HCP's hospice patients—agreed to Ten's conditions.

30. Ten never told HCP that he planned to forward patient personal identifying information to Horowitz, or that Horowitz intended to sell annuity contracts to third parties who would profit when HCP patients died.

31. Between late July 2007 and at least December 2007, Ten met with multiple HCP hospice patients and with certain patients receiving care from other hospice providers. These meetings took place at the patients' homes. Horowitz attended many of these meetings.

32. Social workers from HCP also attended the meetings with HCP hospice patients. Ten told HCP social workers that he wanted to meet with the patients who were receiving charitable assistance from Raphael Health so he could tell their story to Raphael Health's "donors." According to one HCP social worker

> When – at the meeting when we met with the patient in their home, before we met, they, he and [Horowitz], met me and stated that the patients – the

> donors for this money did not want to give to hospitals. They didn't want to give to big organizations, that they would just receive a nameplate.
>
> They wanted to see where their money was being spent; so therefore, Harold and [Horowitz] showed up. They had a box of candy for the patient.

Horowitz was present when Ten made these statements to the HCP social worker and knew them to be false. Horowitz did not, however, clarify or correct them in any way.

33. The patients, their families and their HCP health care providers all believed that the purpose of the visits was charitable. However, Horowitz's true purpose in visiting patients was to confirm that they were in fact dying, and, therefore, that they were suitable annuitants. Horowitz actively concealed his true purpose for attending from HCP and the hospice patients they visited, telling one HCP social worker that he represented persons "who were going to be making donations." This statement was materially false because Horowitz did not represent any donors and in fact there were never any donors to Raphael Health, other than Ten. Horowitz's statement was also materially misleading because he omitted the true purpose for his visit.

34. Unbeknownst to HCP and its patients, after each patient meeting, Ten provided Horowitz with the ID and Health Data that he obtained from HCP under false pretenses. Horowitz arranged for Ten to send the patient ID and Health Data to Horowitz's personal email account. Horowitz then used the patient ID and Health Data to sell variable annuities in which the hospice patients were designated as the contract annuitants.

35. Between July 2007 and at least December 2007, Ten provided Horowitz with the ID and Health Data of hospice patients in southern California. At least six of these patients were designated as annuitants in at least 18 variable annuities sold by Horowitz and a second representative whom Horowitz recruited to the scheme, with some of the patients designated as annuitants in multiple policies. Horowitz paid Ten at least $130,000 for his services to the scheme.

36. As part of the ruse, Ten asked HCP to keep him informed of the health status of each patient whom he had visited, falsely telling HCP that Raphael Health's "donors" wanted to remain apprised of each patient's story. In reality, Horowitz and Ten wanted this information so they would know when each patient died so that Horowitz could timely file annuity death benefit claims for his customers, who then stood to receive payouts on their variable annuity investments. As part of the scheme, Ten obtained death certificates for each of the patients who had been designated as an annuitant and provided the death certificates to Horowitz for his use in filing death benefit claims.

37. HCP, its hospice patients, and their families were completely unaware that Horowitz had sold variable annuities on the lives of HCP hospice patients and that third parties stood to profit from their deaths.

38. HCP would not have released patient ID and Health Data to Ten or allowed Horowitz and Ten to meet with its patients if it had been aware of the true purpose of Raphael

Health and of Horowitz's scheme. Similarly, the patients and their caregivers would not have allowed Horowitz and Ten to meet with them had they known the true purpose of Raphael Health and of Horowitz's scheme.

Horowitz Travels to Chicago to Recruit Additional Annuitant Finders

39. In Fall 2007, Horowitz decided to grow his variable annuity business by expanding the pool of terminally ill individuals available to be designated as annuitants. He travelled to Chicago, Illinois in October 2007, and met with Menachem "Mark" Berger ("Berger"), an executive officer of a privately held company that owned and operated nursing homes in the Chicago area.

40. Horowitz agreed to pay Berger in exchange for his identification of hospice patients and in exchange for supplying Horowitz with the ID and Health Data of terminally ill individuals in the Chicago area. Berger recruited an associate, Debra Flowers ("Flowers"), to assist him in identifying terminally ill patients. As part of their arrangement, Berger and Flowers agreed to keep Horowitz and his associates apprised of the health status of the patient-annuitants, and Berger provided Horowitz and his associates with death certificates when the patients died.

41. Between November 2007 and February 2008, Berger and Flowers[6] supplied Horowitz, or his associates, with the names and ID and Health Data of at least 10 terminally ill patients in Chicago. These patients were designated as annuitants in at least 7 variable annuities sold through Broker-Dealer 2, and in at least 28 variable annuities sold by Respondent Cohen. Horowitz paid Berger at least $150,000 for his and Flowers' services to the scheme.

FRAUD IN THE EXECUTION OF BROKER-DEALER TRADE TICKETS AND POINT-OF-SALE FORMS

Horowitz Falsifies his Broker-Dealer 1 Trade Tickets

42. Between July 2007 and October 2007, Horowitz sold at least 14 deferred bonus variable annuities to his customers through his registration with Broker-Dealer 1.

43. For each of these 14 annuities, Horowitz designated a terminally ill hospice patient as the contract annuitant and used the patient ID and Health Data that he and Ten had fraudulently obtained from hospice care providers, through Raphael Health or directly from patients or their family caregivers. By designating patients with terminal medical diagnoses as the contract annuitants, Horowitz sought to guarantee that his customers would receive death benefit payouts within months of the annuities sales. For his part, Horowitz stood to receive lucrative upfront commissions on each stranger-owned annuity he sold.

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[6] On March 13, 2014, the Commission instituted settled public administrative and cease-and desist proceedings against Berger and Flowers, which included collateral, investment company, and penny stock bars and a cease and desist order. Berger was further ordered to pay disgorgement and a civil penalty. Exchange Act Release No. 71712, Admin. Proc. File No. 3-15787 (Mar. 13, 2014).

44. Horowitz marketed his stranger-owned annuities investment strategy to customers as an opportunity for obtaining short-term investment gains with a hedge against investment losses, and Horowitz's customers intended to use the variable annuities as short-term investment vehicles. However, Horowitz also knew that, in the event the "stranger annuitants" did not die within a matter of months, his customers would be locked into unsuitable, highly illiquid long-term investment vehicles that they would be unable to exit without paying substantial surrender charges.

45. To ensure that its registered representatives were selling suitable investments to their customers, and to ensure that the investment was being used for its intended purpose, Broker-Dealer 1 required its principals to review and approve each proposed sale of an annuity. As part of this process, Broker-Dealer 1 mandated that Horowitz complete an electronic trade ticket, including a suitability questionnaire, for every variable annuity that he sold. A Broker-Dealer 1 principal reviewed each trade ticket. Variable annuity applications could be submitted to the issuing insurance company only after principal approval of the ticket.

46. Each trade ticket required Horowitz to state how long the customer intended to hold the variable annuity being purchased. As part of the review process, Broker-Dealer 1's principals closely scrutinized the response to this question to ensure, among other things, that the customer intended to hold the investment for a period of time exceeding the surrender charge period in the deferred variable annuity contract being purchased. The 14 annuities that Horowitz sold through Broker-Dealer 1 had a nine year surrender charge period.

47. Knowing that his stranger-owned annuities sales would be rejected by Broker-Dealer 1's reviewing principals if he provided truthful timing information concerning his customers' intention to use the annuities as short-term investment vehicles, Horowitz submitted trade tickets falsely stating that his customers intended to hold their annuities from anywhere between 20 and 40 years. Horowitz submitted at least 14 trade tickets containing these materially false statements.

48. The same trade tickets also required Horowitz to state the relationship between the owner of the annuity and the annuitant. With respect to each trade ticket that Horowitz submitted for principal review, he falsely stated that there was a "partner" relationship between the owner and the annuitant.

49. In fact, there was no relationship, either familial or business, between the customers purchasing the annuities from Horowitz and the terminally ill hospice patients designated as annuitants. Indeed, the hospice patients had no idea that they had been designated as annuitants or that investors stood to profit from their deaths. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if they had known that there was no relationship between the annuity purchaser and the annuitant.

50. By providing false information about his customers, Horowitz fraudulently obtained principal approval of his stranger-owned annuities sales, which were then submitted to the variable annuity issuer. As a result of Horowitz's fraudulent acts and practices, the issuer then

unwittingly issued stranger-owned variable annuities to Horowitz's customers and paid out substantial upfront sales commissions to Horowitz.

Jane Doe 1: An Illustration of How Horowitz Carried Out the Scheme at Broker-Dealer 1

51. By way of example, Ten was approached by John Doe 1, who requested assistance for his wife, Jane Doe 1, who was dying of colon cancer.

52. John and Jane Doe 1 had a young son, and John Doe 1 had a full-time job. Jane Doe 1's condition had reached the point where she required 24-hour nursing, and John Doe 1 was requesting Ten's help with half of the nursing costs.

53. Ten told Horowitz about Jane Doe 1's condition and Horowitz decided to designate Jane Doe 1 as the annuitant in a variable annuity contract that he sold.

54. To that end, in late July 2007, Ten and Horowitz met with John and Jane Doe 1 at their home in Los Angeles, under the pretense of providing charitable assistance. Horowitz noted the meeting in his day-timer.

55. During their brief meeting, Ten discussed the aid that Jane Doe 1 would need, but neither Ten nor Horowitz ever mentioned variable annuities, or proposed designating Jane Doe 1 as an annuitant in variable annuities to be sold to third parties.

56. Shortly after this meeting—and unbeknownst to Jane and John Doe 1—Ten emailed Jane Doe 1's name and ID Data (including her social security number and date of birth) to Horowitz's personal email account.

57. On July 31, 2007, Horowitz sold a $1.7 million variable annuity contract to a close family member in which Jane Doe 1 was designated as the annuitant.

58. In order to process this annuity sale, Horowitz completed an electronic trade ticket on which he identified Jane Doe 1 as the investor's "partner." This statement was false because there was no business, familial or other relationship between Jane Doe 1 and the investor.

59. In response to the investment access question on the trade ticket, Horowitz stated that the investor intended to hold the annuity for "25 years." In fact, as Horowitz knew, the investor intended to hold the investment only until Jane Doe 1 died, and Horowitz had selected Jane Doe 1 to be the annuitant because he understood her death to be imminent.

60. Based on these false representations, a Broker-Dealer 1 principal approved the trade ticket and Broker-Dealer 1 electronically submitted the investor's variable annuity application to the variable annuity issuer, which thereafter unwittingly issued a stranger-owned annuity contract.

61. The variable annuity issuer subsequently paid out a commission to Broker-Dealer 1, with Horowitz netting over $28,500 in commissions on the sale of the annuity.

62. On August 5, 2007, four days after the annuity contract became effective, Jane Doe 1 died. John Doe 1 notified Ten of Jane Doe 1's death via email on August 14, 2007. John Doe 1 requested approximately $1,200, representing half the cost of the 24-hour nursing coverage for Jane Doe 1.

63. Ten never responded to John Doe 1's August 14 email. Having received no aid or assistance, and no response from Ten, John Doe 1 wrote to Ten again on August 21 and told him to "use the money for someone else that is more in need."

64. Unbeknownst to John Doe 1, Ten thereafter obtained a copy of Jane Doe 1's death certificate and provided it to Horowitz. Horowitz used the death certificate to prepare a death benefit claim on the investor's annuity, which was then submitted to the issuer.

65. On October 19, 2007, the investor received a death benefit payout on the "Jane Doe 1" annuity of $2,002,073.85. The investor realized a net profit on his initial $1.7 million investment of $302,073.85—representing a 17.7% rate of return over a period of two and a half months.

Horowitz Falsifies Broker-Dealer 2 Point-of-Sale Forms

66. In mid-November 2007, Horowitz's supervisors at Broker-Dealer 1 discovered that he was selling stranger-owned annuities and instructed him to immediately stop doing so.

67. At the time, Horowitz had over $24 million in variable annuities business pending at Broker-Dealer 1.

68. Unable to sell additional stranger-owned annuities through Broker-Dealer 1, Horowitz sought assistance from a senior associated person of Broker-Dealer 2 ("Senior Rep") in completing the sale of stranger-owned annuities through an affiliate of Broker-Dealer 2.

69. Working with the office staff of the Broker-Dealer 2 affiliate, Respondent Horowitz completed the Broker-Dealer 2 new account forms and deferred variable annuity applications for the deferred variable annuities he had initially intended to sell to his customers through Broker-Dealer 1.

70. In each of those annuities, Horowitz designated a hospice patient as the contract annuitant, utilizing patient ID and Health Data that the Annuitant Finders had obtained and supplied to him. Horowitz did this in an effort to structure the annuities as short-term investment vehicles.

71. As was the case at Broker-Dealer 1, variable annuity sales at Broker-Dealer 2 were subject to principal review and approval to ensure that the proposed sale was suitable and that the

investment was being used for its intended purpose. Broker-Dealer 2 representatives were required to complete a new account form that required the representative to state the customer's investment time horizon (*i.e.*, when the customer anticipated accessing their investment) and to disclose certain financial profile information.

72. Broker-Dealer 2 also required its representatives to complete a "Variable Annuity Acknowledgement" form, specifically identifying the surrender charge period associated with the annuity being purchased. As part of the review process, a Broker-Dealer 2 principal closely scrutinized each customer's investment time horizon to ensure that it exceeded the surrender charge period in the deferred variable annuity contract being purchased.

73. Knowing that these stranger-owned annuity sales would be rejected by Broker-Dealer 2's reviewing principals if he provided truthful investment time horizons, Horowitz prepared new account forms falsely stating that the customers intended to hold their annuities from anywhere between 9 to 45 years.

74. The Senior Rep then recruited his subordinate business partner ("Signing Rep") to sign the new account forms and variable annuity applications as the selling registered representative. The Signing Rep agreed to do so in exchange for a percentage of the commissions to be earned on these annuities sales. The Signing Rep did not complete any variable annuity application paperwork or Broker-Dealer 2 new account forms, and he did not consider the purchasers of the annuities to be his customers.

75. By providing false customer information on the Broker-Dealer 2 new account forms, and by using a nominee broker to sign off on the required Broker-Dealer 2 point-of-sale paperwork, Horowitz fraudulently obtained principal approval of stranger-owned annuities sold through Broker-Dealer 2.

76. Working in this manner, between late November 2007 and mid-December 2007, Horowitz was able to effect the sale of at least 12 additional stranger-owned variable annuities – 2 of which were sold to a close Horowitz family member – through Broker-Dealer 2. During the same time period, Horowitz was not an associated person of Broker-Dealer 2, nor was he separately registered with the Commission as a broker or dealer.

Jane Doe 2: An Illustration of how Horowitz Continued the Scheme through Broker-Dealer 2

77. On November 19, 2007—after Horowitz had been instructed by Broker-Dealer 1 to stop selling stranger-owned annuities—Ten met with Jane Doe 2, a terminally ill HCP hospice patient, under the pretense of providing charitable assistance through Raphael Health. Horowitz travelled with Ten to Jane Doe 2's home.

78. Jane Doe 2, dying of stomach cancer, had previously told her HCP social worker about her desire to take her children to Disneyland before she passed away. HCP notified Raphael

Health about Jane Doe 2's request for assistance, after first determining that she likely would not live long enough to have her request processed through another well-known charitable foundation.

79. Raphael Health paid $405 towards the cost of the trip to Disneyland, which Jane Doe 2 was able to take with her children. As a condition of the donation, Ten required HCP to provide him with Jane Doe 2's ID and Health Data prior to the visit and, thereafter, met with Jane Doe 2 at her home. During the brief meeting, neither Ten nor Horowitz mentioned variable annuities or proposed designating Jane Doe 2 as an annuitant in variable annuities to be sold to third parties.

80. On the drive back from Jane Doe 2's home, Horowitz asked Ten if he wanted to purchase an annuity on Jane Doe 2's life. Ten agreed to do so.

81. On the same day, Horowitz arranged for Ten to purchase a deferred variable annuity through Broker-Dealer 2, in which Jane Doe 2 was designated as the contract annuitant. Ten provided Horowitz with Jane Doe 2's ID and Health Data (including date of birth, address and social security number) that Horowitz needed in order to designate her as the annuitant in Ten's annuity. Ten invested $1 million in the annuity.

82. To ensure that Ten's variable annuity application was approved by Broker-Dealer 2, Horowitz made several material false statements on Ten's Broker-Dealer 2 new account form. First, Horowitz falsely stated that Ten had a "27" year investment "time horizon" on his annuity. In fact, Ten intended to utilize the annuity as a short-term investment vehicle of no more than several months.

83. Second, Horowitz falsely stated that Ten's net worth was "$15,000,000" and that Ten had liquid assets of "$7,500,000." In fact, Ten's total net worth was no more than $2 million; he had liquid assets of no more than $750,000 to $1 million; and he had margined his brokerage account to obtain the funds to purchase the annuity.

84. Horowitz falsely inflated Ten's financials because he knew that Broker-Dealer 2's principals were unlikely to approve a $1 million investment in an illiquid, long-term investment vehicle by a customer with liquid assets equal to or less than that amount.

85. Finally, Horowitz had the Signing Rep sign off as the selling representative on Ten's new account form and variable annuity application while knowing that Ten had never spoken with the Signing Rep concerning the annuity and that the Signing Rep did not consider Ten his customer.

86. Based on Horowitz's and the Signing Rep's false representations, a Broker-Dealer 2 principal approved Ten's variable annuity purchase, and the variable annuity application was submitted to the issuer.

87. On or about November 26, 2007, the issuer unwittingly issued a stranger-owned deferred variable annuity contract to Ten in which Jane Doe 2 was the designated annuitant. Because he invested his $1 million in a "bonus" annuity, Ten's account was credited with $50,000.

88. On December 20, 2007, Jane Doe 2 died. Ten obtained a copy of her death certificate and provided it to Horowitz. Horowitz used the death certificate to prepare a death benefit claim on Ten's "Jane Doe 2" annuity, which was then submitted to the issuer.

89. Ten subsequently received death claim payouts from the issuer totaling $1,050,322.60, realizing a net profit of over $50,000 on his initial $1 million investment.

Cohen's Role

90. By early Fall 2007, Horowitz had sold over $20 million of the stranger-owned variable annuities to individual investors but desired to pump greater capital into the scheme. Searching for a large source of financing, Horowitz began pitching his scheme to institutional investors.

91. On or about October 25, 2007, Horowitz met with the principals of two affiliated hedge funds in New York City. As a result of the meeting, the principals decided to establish an affiliated entity, Institutional Investor 1, to facilitate the funds' joint investment in Horowitz's annuity scheme.

92. In December 2007, a certain variable annuity issuer terminated Horowitz's and the Signing Rep's appointments to sell its variable annuity products after determining that Horowitz and the Signing Rep had been selling stranger-owned annuities. Another variable annuity issuer subsequently terminated Horowitz's appointment to sell its annuities as well.

93. Unable to sell annuities through Broker-Dealer 1 or through the Signing Rep, Horowitz sought out a new broker through whom he could perpetuate his scheme.

94. In December 2007, Horowitz met with Cohen in Las Vegas and described his stranger-owned annuities investment strategy to him. At the time, Cohen was a registered representative with Broker-Dealer 3.

95. Horowitz told Cohen that he had a "hedge fund" client, who wanted to invest in stranger-owned variable annuities on a short-term basis. Horowitz told Cohen that Horowitz or his associates would supply Cohen with the customers and the hospice patient annuitants, while Cohen would serve as the registered representative on the additional tranche of stranger-owned variable annuities sales. In exchange, Cohen would pay Horowitz's associates a "consulting fee." Cohen agreed to the arrangement.

96. Between January and February 2008, Cohen, while an associated person of Broker-Dealer 3, sold at least 28 deferred variable annuities contracts to nominees of Institutional Investor 1, utilizing the deferred variable annuity products of at least 7 different insurance companies. Collectively, these nominees purchased approximately $40 million in variable annuities.

97. In each of the annuities he sold, Cohen designated a hospice or nursing home patient as the contract annuitant, utilizing patient ID and Health Data supplied to Cohen by Horowitz's associates (who, in turn, had received the data from Berger and Flowers). Accordingly, Cohen knew that the annuities were being purchased with the intention of using them as vehicles for short-term investment.

98. As was the case at Broker-Dealers 1 and 2, variable annuities sales at Broker-Dealer 3 were subject to principal review to ensure that the proposed sale was suitable and that the investment was being used for its intended purpose. With respect to each annuity contract that he sold, Cohen was required to complete a "variable annuity point of sale" form. Among other information, Cohen was required to state when his customers intended to begin accessing their annuity investment, and whether they intended to do so during the surrender charge period.

99. As part of the principal review, Broker-Dealer 3 principals scrutinized the investment access information that Cohen provided on behalf of his customers to ensure that each customer would not need access to their investment during the surrender charge period in the annuity being purchased. Each of the variable annuity products that Cohen sold had a surrender charge period of at least 7 years.

100. Knowing that Broker-Dealer 3 would not approve his variable annuity sales if he provided truthful investment access information for his customers, Cohen provided false information regarding how soon the customers intended to access the investment (i.e., not before "11 to 15 years") on each of the 28 Broker-Dealer 3 "Annuity-Point of Sale" forms that he completed.

101. By providing false investment access information for the nominees of Institutional Investor 1, and by failing to disclose that they intended to access their annuities well within the surrender charge period, Cohen was able to fraudulently obtain principal approval of his stranger-owned annuities sales. As a result of Cohen's fraudulent acts and practices, the insurance companies whose variable annuities Cohen sold unwittingly issued stranger-owned variable annuities to Cohen's customers, and paid out substantial upfront sales commissions to Cohen.

ILL-GOTTEN GAINS

102. Horowitz earned a total of $317,724 in sales commissions on the stranger-owned variable annuities that he sold. These commissions were paid by VA Issuer, which unwittingly issued stranger-owned annuities to the Horowitz's customers.

103. Close family members also purchased annuities from Horowitz, and paid him at least $30,000 when they profited on their annuities sales.

VIOLATIONS

104. As a result of the conduct described above, Horowitz willfully violated Sections 17(a)(1) and 17(a)(2) of the Securities Act, which make it unlawful for any person, in the offer or

sale of any securities, directly or indirectly, (1) to employ devices, schemes or artifices to defraud, or (2) to obtain money or property by means of any materially false statement or materially misleading omission.

105. As a result of the conduct described above, Horowitz willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of a security, to (a) employ devices, schemes, or artifices to defraud, (b) make untrue statements of material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or (c) engage in acts, practices or courses of business which operate or would operate as a fraud or deceit upon persons.

106. As a result of the conduct described above, Horowitz willfully violated Section 15(a) of the Exchange Act, which makes it unlawful for any person, directly or indirectly, while acting as a broker or dealer, to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities when they are not registered with the Commission as a broker or dealer or associated with any entity registered with the Commission as a broker or dealer.

107. As a result of the conduct described above, Horowitz willfully aided and abetted and caused Broker-Dealer 1's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder. Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder require that every registered broker or dealer make and keep a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities. Implicit in these provisions is the requirement that information contained in a required record or report be accurate.

108. As a result of the conduct described above, Horowitz willfully aided and abetted and caused Broker-Dealer 1's and Broker-Dealer 2's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(17) thereunder. Section 17(a) of the Exchange Act and Rule 17a-3(a)(17) thereunder require that every registered broker or dealer, and for each account with a natural person as a customer or owner, make and keep an account record, including, among other required information, the account owner's name, tax identification number, address, annual income, net worth, and the account's investment objectives. Implicit in these provisions is the requirement that information contained in a required record or report be accurate.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Horowitz's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Horowitz cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 15(a) and 17(a) of the Exchange Act and Rules 10b-5, 17a-3(a)(6) and 17a-3(a)(17) promulgated thereunder.

B. Respondent Horowitz be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Horowitz shall, within ten (10) days of the entry of this Order, pay disgorgement of $347,724, prejudgment interest of $103,025.21 and civil penalties of $400,000, for a total payment of $850,749.21, to the Securities and Exchange Commission. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Michael A. Horowitz as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F. St., NE, Washington, DC 20549.

V.

It is hereby further ORDERED that these proceedings shall continue as to Respondent Moshe Marc Cohen.

By the Commission.

Jill M. Peterson
Assistant Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15790

In the Matter of MICHAEL A. HOROWITZ and MOSHE MARC COHEN, Respondents.	ANNEX A TO ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO MICHAEL A. HOROWITZ

ANNEX A

Respondent Michael A. Horowitz admits only the facts set forth below (the "Admissions") and acknowledges that his conduct violated the federal securities laws:

Variable Annuities

1. Variable annuities are designed to serve as long-term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits[1] and/or bonus credits.[2]

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1 The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant's death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio's value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract "annuitant." However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

2 A bonus credit is a sum of money immediately credited to the contract owner's investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an

Horowitz's "Stranger-Owned" Variable Annuities Investment Strategy

2. Between June 2000 and August 2008, Horowitz was a registered representative at Broker-Dealer 1. Broker-Dealer 1 is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

3. In or about May 2007, Horowitz devised a strategy to market variable annuities as short-term investments after learning about the features of certain variable annuity contracts offered by an annuity issuer ("VA Issuer"). Certain features of the annuity contracts were first disclosed to Horowitz by senior representatives of the VA Issuer, which sponsored a seminar for registered representatives of Broker-Dealer 1. Horowitz subsequently had meetings and email correspondence with a sales representative for the VA Issuer.

4. In particular, Horowitz learned from the VA Issuer that, unlike traditional life insurance, these variable annuity contracts—as long as they were purchased under a certain dollar threshold—required neither a physical examination of, nor proof of an "insurable interest" in, the "annuitant," *i.e.*, the person whose death would trigger the products' payout provisions. Horowitz further determined that with respect to certain of the VA Issuer's deferred variable annuity products: (i) the VA Issuer provided an immediate "bonus credit" of up to 5% of the amount invested, which was credited to the contract owner's investment account; (ii) the contract owner could invest his or her premiums in mutual funds available under the contract; (iii) the annuities contained death benefit options; (iv) although substantial "surrender charges" were ordinarily assessed if the annuities were liquidated within the first 7-10 years, such charges were typically not incurred in the event of a death benefit payout; (v) even if the annuitant died before the "surrender charge" period had run, the VA Issuer would not "claw back" any of the sales commissions it paid to the selling representative; (vi) the VA Issuer did not require an annuitant's signature on the annuity application; (vii) the VA Issuer did not require any representations of a familial or business relationship between the owner and the annuitant on its applications; and (viii) so long as the amount of the contract was $2,000,000 or less, the VA Issuer did not perform any medical underwriting on the proposed annuitant.

5. Between July 2007 and October 2007, Horowitz sold at least 14 deferred bonus variable annuities to his customers through his registration with Broker-Dealer 1.

6. For each of these 14 annuities, Horowitz designated a terminally ill hospice patient as the contract annuitant. By designating patients with terminal medical diagnoses as the contract annuitants, Horowitz sought to guarantee that his customers would receive death benefit payouts within months of the annuities sales. For his part, Horowitz stood to receive lucrative upfront commissions on each stranger-owned annuity he sold.

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initial investment of $1 million and received "bonus credits" that increased the value of their annuity by 5% ($50,000) to $1,050,000.

7. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term.

8. These "stranger annuitants" likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the strategy. Instead, each of the contracts directed these benefits be paid to one of the investor's family members or relatives, or to a family trust created by the investor.

9. Horowitz marketed his stranger-owned annuities investment strategy to customers as an opportunity for obtaining short-term investment gains with a hedge against investment losses, and Horowitz's customers intended to use the variable annuities as short-term investment vehicles.

10. However, Horowitz's strategy carried with it the risk that, if the "stranger annuitants" did not die within a matter of months, Horowitz's customers would be locked into unsuitable, highly illiquid long-term investment vehicles that they would be able to exit only by paying substantial surrender charges.

Horowitz Obtains Patient ID and Health Data through Annuitant Finders

11. Horowitz needed to identify terminally ill persons to use as annuitants in variable annuity sales. Horowitz asked certain individuals, including Harold Z. Ten and Menachem "Mark" Berger, to identify the terminally ill persons to be used as annuitants.

12. Horowitz needed the personal identifying information of the terminally ill persons to designate them as annuitants and to submit death benefit claims to the issuers whose annuities he sold.

13. Between July 2007 and at least December 2007, Harold Ten provided Horowitz with the ID and Health Data of hospice patients in southern California. At least six of these patients were designated as annuitants in at least 18 variable annuities sold by Horowitz and a second representative, with some of the patients designated as annuitants in multiple policies.

False Statements on the Annuity Trade Tickets

14. To ensure that its registered representatives were selling suitable investments to their customers, and to ensure that the investment was being used for its intended purpose, Broker-Dealer 1 required its principals to review and approve each proposed sale of an annuity. As part of this process, Broker-Dealer 1 mandated that Horowitz complete an electronic trade ticket, including a suitability questionnaire, for every variable annuity that he sold. A Broker-Dealer 1 principal reviewed each trade ticket. Variable annuity applications could be submitted to the issuing insurance company only after principal approval of the ticket.

15. Each trade ticket required Horowitz to state how long the customer intended to hold the variable annuity being purchased. As part of the review process, Broker-Dealer 1's principals closely scrutinized the response to this question to ensure, among other things, that the customer intended to hold the investment for a period of time exceeding the surrender charge period in the deferred variable annuity contract being purchased. The 14 annuities that Horowitz sold through Broker-Dealer 1 had a nine year surrender charge period.

16. Horowitz submitted trade tickets falsely stating that his customers intended to hold their annuities from anywhere between 20 and 40 years. Horowitz submitted at least 14 trade tickets containing these materially false statements. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if he had provided truthful timing information concerning his customers' intention to use the annuities as short-term investment vehicles.

17. The same trade tickets also required Horowitz to state the relationship between the owner of the annuity and the annuitant. With respect to each trade ticket that Horowitz submitted for principal review, he falsely stated that there was a "partner" relationship between the owner and the annuitant.

18. In fact, there was no relationship, either familial or business, between the customers purchasing the annuities from Horowitz and the terminally ill hospice patients designated as annuitants. Broker-Dealer 1's principals would not have approved Horowitz's annuities sales if they had known that there was no relationship between the annuity purchaser and the annuitant.

19. By providing false information about his customers, Horowitz obtained Broker-Dealer 1 principal approval of his stranger-owned annuities sales, which were then submitted to the VA Issuer. The VA Issuer then unwittingly issued 14 stranger-owned variable annuities to Horowitz's customers and paid out substantial upfront sales commissions to Horowitz.

Ill-Gotten Gains

20. Horowitz earned a total of $317,724 in sales commissions on the stranger-owned variable annuities that he sold. These commissions were paid by VA Issuer, which unwittingly issued stranger-owned annuities to the Horowitz's customers.

Conclusion

21. The above-described conduct by Horowitz was undertaken in connection with the purchase, offer, or sale of a security.

22. In connection with the violations described in the foregoing Admissions, Horowitz's actions were, at a minimum, reckless.

Commissioner Aguilar
Commissioner Stein
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3885 / July 31, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31196 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15994

In the Matter of

JASON D. HUNTLEY,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Jason D. Huntley ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. Between 2007 and 2010, Respondent, the former president of an investment advisory firm in Colorado Springs, Colorado, failed to disclose to his clients facts giving rise to material conflicts of interest in connection with multiple client investments. Specifically, Respondent: (1) failed to tell clients that he had obtained more than $2 million for a loan from a private fund in which those clients were invested; (2) recommended that clients approve a transaction involving another private fund without disclosing that he expected to receive compensation as a result of the transaction; (3) bought stock in client accounts without advising clients of the personal benefit he stood to obtain from doing so; and (4) solicited clients to participate in a large private equity investment without disclosing conflicts arising from his relationships with the other parties to the transaction. In so doing, Respondent violated Sections 206(1) and 206(2) of the Advisers Act.

Respondent

2. Respondent, age 42, is a resident of San Diego, California. From approximately 2001 until 2011, Respondent was president of Huntley Thatcher Ellsworth, Ltd., an investment adviser formerly registered with the Commission. Prior to the firm's dissolution in 2011, Respondent had primary responsibility for client accounts comprising a majority of the firm's assets under management, which exceeded $200 million prior to the 2008 market downturn.

Other Relevant Entity

3. Huntley Thatcher Ellsworth, Ltd. ("HTE") is a now-defunct Colorado corporation, which was based in Colorado Springs, Colorado, and was registered as an investment adviser with the Commission from 1997 until 2011. As of December 31, 2008, HTE provided discretionary advisory services to approximately 200 client accounts.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

A. *Respondent Failed to Disclose His Receipt of a Loan from a Private Fund while Clients were Invested in the Fund.*

4. Between April 2006 and June 2007, approximately 25 HTE clients – nearly all of them clients for whom Respondent acted as primary adviser – invested approximately $6.4 million in a private fund specializing in real-estate lending ("Private Fund A").

5. In July 2007, entities controlled by Respondent agreed to borrow approximately $2.5 million from a third party ("Lender") to fund the purchase of farmland in Walla Walla, Washington, which Respondent intended to develop as part of a business venture.

6. After Respondent executed promissory notes on behalf of two entities he controlled, however, it became apparent that Lender lacked sufficient liquidity to finance Respondent's loan. Lender and Respondent, together, therefore sought funding for Respondent's loan from Private Fund A.

7. In September 2007, following communications with Respondent, Private Fund A agreed to make two loans to Lender. As security for those loans, Lender assigned to Private Fund A the promissory notes executed by Respondent on behalf of the entities he controlled. Private Fund A then transmitted funds to Lender, who, in turn, passed funds through to entities controlled by Respondent. These entities then used the funds to make real estate investments in Walla Walla, Washington.

8. Respondent was aware that Private Fund A was the source of the funds he received for his real estate investment. He nonetheless continued to advise clients as to their investments in Private Fund A without disclosing that the fund had financed his personal real estate venture. The value of clients' Private Fund A positions subsequently declined more than 80%.

B. *Respondent Failed to Disclose Anticipated Compensation from a Transaction Involving Assets of Another Private Fund when Recommending that Clients Consent to the Transaction.*

9. In 2008, approximately 20 HTE clients – nearly all of them clients for whom Respondent acted as primary adviser – invested approximately $5.8 million in a "fund of funds" that invested in multiple asset-backed lending funds ("Private Fund B"). Not long after this investment, Private Fund B began to experience liquidity problems.

10. In October 2009, Respondent introduced Private Fund B's adviser to representatives of a publicly traded special purpose acquisition company (the "SPAC"). That introduction led to negotiations directly between the SPAC and Private Fund B's adviser about a potential business transaction. Respondent made clear to the parties that he expected to be compensated for the introduction should their negotiations prove fruitful.

11. In December 2009, the SPAC and Private Fund B's adviser came to terms on an agreement whereby the SPAC would acquire the assets of Private Fund B, along with several other private funds managed by the adviser. In return, Private Fund B would receive publicly traded

shares of the SPAC. That agreement explicitly contemplated the payment of a finder's fee to Respondent.

12. In late December 2009, Private Fund B's adviser sought consent from fund investors to proceed with the proposed transaction with the SPAC. Respondent recommended that his clients provide such consent, which many did. Respondent failed to disclose to his clients that he expected to be compensated for the very transaction he was recommending them to approve.

13. Following investor approval and closing of the transaction, Respondent received a purported "consulting agreement" with the SPAC, pursuant to which he received, without condition, 166,000 restricted shares of the SPAC's stock as compensation for introducing the parties to the transaction. At the then-current market price, those 166,000 shares had a value of approximately $1 million.

C. *Respondent Purchased Shares of the SPAC in Client Accounts without Disclosing That He Stood to Personally Benefit.*

14. As of January 2010, the SPAC was pursuing listing on the New York Stock Exchange ("NYSE").

15. In late January 2010, an individual associated with the SPAC ("Person A") asked Respondent to help the company achieve its NYSE-listing objective by purchasing "round lots" of the SPAC's publicly traded stock in HTE client accounts, thereby increasing the number of public shareholders in the SPAC. Respondent indicated to Person A that he was inclined to help increase the SPAC's shareholder count, but that he first needed to receive his compensation for the transaction, described above, between the SPAC and Private Fund B. The next day, Person A delivered to Respondent the purported "consulting agreement" guaranteeing Respondent 166,000 restricted shares in the SPAC "to avoid further delays."

16. Three days later, Respondent directed HTE to purchase approximately 18,000 shares of the SPAC's publicly traded stock for approximately 80 separate clients, nearly all of them clients for whom Respondent acted as primary adviser. Respondent did not disclose to clients that these stock purchases in their accounts had been requested by Person A and conditioned by Respondent upon his receipt of compensation from Person A. Nor did Respondent disclose that he owned 166,000 restricted shares in the SPAC and could potentially benefit from any improvement in the market for its stock, including its possible listing on the NYSE.

D. *Respondent Recommended a Private Equity Investment to Clients Without Disclosing Numerous Conflicts Arising from his Relationships with other Parties to the Transaction.*

17. On or about January 5, 2010, Respondent, through his dealings with Person A and another individual ("Person B"), obtained an option to buy shares in a company ("Company A"), whose shares were thinly traded on the over-the-counter market known as the "Pink Sheets." Specifically, under the terms of an option agreement to which an entity controlled by Respondent was a party:

a. The entity controlled by Respondent received the right to purchase, directly from Company A, up to $5 million worth of restricted stock in Company A at $.21 per share;

b. a separate entity ("the Call Option Entity") had the option to buy the shares from the entity controlled by Respondent at either $.50 or $.75 per share, depending on the date of the exercise; and

c. if the Call Option Entity failed to exercise its option, the entity controlled by Respondent had the right to *put* the shares to another entity ("the Put Option Entity") – i.e., force that entity to buy the shares – at $.25 per share.

18. In mid-January 2010, Respondent solicited five HTE clients for whom he acted as primary adviser to invest in a limited liability company ("the LLC"), which Respondent had formed for the sole purpose of exercising the option he had obtained to purchase shares in Company A.

19. In recommending this investment to his clients, Respondent emphasized, among other things: (a) that the Call Option Entity was intent on exercising its option, which would generate substantial profit for members of the LLC; (b) that the Put Option Entity could be relied upon to fulfill its obligation to buy the shares if called upon to do so; and (c) that Respondent personally planned to invest his own money into the LLC. Respondent failed to disclose to his clients, however, facts that presented material conflicts of interest in recommending the investment.

20. Respondent failed to tell his clients, for instance, that the Call Option Entity was controlled by Person B; that he and Person B viewed the investment in Company A as a vehicle for generating value that would help them resolve a lawsuit they were both defending at the time; that various entities controlled by Person B had previously loaned several million dollars to entities controlled by Respondent and had made large equity investments in HTE and a winery that Respondent had founded; and that another entity controlled by Person B was loaning $500,000 to Respondent to finance Respondent's investment into the LLC.

21. Respondent also failed to disclose that the individual behind the Put Option Entity (and a driving force behind the entire transaction) was Person A; that Respondent was then seeking compensation from Person A for his role in the Private Fund B/SPAC transaction; that he intended to use compensation from the Private Fund B/SPAC transaction as collateral for the $500,000 loan from Person B, which he planned to use to fund his investment in the LLC; and that Respondent was helping Person A source other business opportunities, had been compensated in the past for such efforts, and hoped to derive additional financial benefits from his relationship with Person A in the future.

22. Respondent's clients ultimately invested a total of $1.4 million into the LLC. At Respondent's direction, the LLC then purchased approximately 9 million shares in Company A, using the $1.4 million contributed by clients and the $500,000 that an entity controlled by Respondent obtained through Person B. The investment proved to be a total loss, as the Call Option Entity failed to exercise its right to buy the shares, the Put Option Entity failed to fulfill its

obligation to do so, and the market for Company A's stock declined, leaving the LLC with 9 million shares of a thinly traded penny stock it could not sell.

Violations

23. By intentionally or recklessly failing to disclose to clients facts creating material conflicts of interest with respect to the investments described above, Respondent willfully violated Section 206(1) of the Advisers Act, which prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client.

24. By the same conduct, Respondent willfully violated Section 206(2) of the Advisers Act, which prohibits an adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order; and

D. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jason D. Huntley as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

By the Commission.

Jill M. Peterson
Assistant Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

Commissioner Aguilar
Commissioner Piwowar
Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72731 / July 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15996

In the Matter of **DAVID H. STERN,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against David H. Stern ("Stern" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section 111.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. From December 2008 through May 2010, Stern was the principal and controlled the hiring, training, and monitoring of telemarketers of First Resource Group LLC ("First Resource"), engaged in the in the solicitation of registered representatives at registered broker- dealers to purchase stocks in TrinityCare Senior Living, Inc. ("TrinityCare") and Cytta Corporation ("Cytta"). Stern, indirectly through telemarketers he managed, solicited investors to purchase TrinityCare and Cytta securities in exchange for sales commissions. First Resource has never been registered with the Commission in any capacity. During this period, Stern was neither registered as a broker-dealer nor associated with a registered broker-dealer.

2. On July 10, 2014, a final judgment was entered by consent against Stern, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. David H. Stern, et al, Civil Action Number 12-CV-60137, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleges that, among other things, in connection with the solicitation of registered representatives at registered broker-dealers to purchase stocks of TrinityCare and Cytta securities, Stern materially misrepresented stock price increases for TrinityCare, and TrinityCare's projected revenue growth and Cytta's projected sales. The complaint also alleges that Stern did not disclose that First Resource or Stern intended to sell TrinityCare and Cytta securities while simultaneously touting those stocks. The complaint also alleges that First Resource and Stern engaged in numerous transactions that created a false and misleading appearance of active trading activity in TrinityCare and Cytta stock. The complaint further alleges that First Resource and Stern paid commissions to telemarketers to solicit registered representatives at registered broker-dealers to purchase TrinityCare and Cytta securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Stern's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Stern be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Jill M. Peterson

Jill M. Peterson
Assistant Secretary