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Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-32-08. 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 Web site (<http://www.sec.gov/rules/final.shtml>). Comments are also available for public inspection and copying 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Thu B. Ta, Senior Counsel, or Diane C. Blizzard, Attorney-Fellow, at (202) 551-6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5041.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 22e-3T [17 CFR 270.22e-3T] under the Investment Company Act¹ as an interim final temporary rule. We are soliciting comments on all aspects of the interim final temporary rule. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release.

I. BACKGROUND

Money market funds are open-end management investment companies (“funds”) registered under the Investment Company Act that have an investment objective of maintaining a stable net asset value (typically \$1.00 per share) by investing in short-term, high quality securities.² Rule 2a-7 under the Investment Company Act governs the operation of money market funds; the rule facilitates the maintenance of a stable net asset value by permitting money market funds to use the amortized cost method of valuing their securities.

Under the Act, funds must calculate their current net asset value per share by reference to: (i) the market values of their portfolio securities or, (ii) in the absence of readily available market quotations for the securities, their fair value as determined in good faith by the funds’ boards of directors.³ Rule 2a-7 provides an exemption from these requirements in the case of money market funds. Under the amortized cost method of valuation in rule 2a-7, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of

¹ 15 U.S.C. 80a. Unless otherwise noted, all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270], and all references to statutory sections are to the Investment Company Act.

² 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)]. Most money market funds seek to maintain a stable net asset value per share of \$1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.*, \$10.00. For convenience, throughout this release, the discussion will simply refer to the stable net asset value of \$1.00.

³ Section 2(a)(41) of the Act and rules 2a-4(a)(1) and 22c-1 under the Act.

premium or accumulation of discount.⁴ In order to use this method of valuing securities, a money market fund must establish controls to monitor the deviation between the fund's stabilized share price, *e.g.*, \$1.00, and its market-based share price.⁵ If the deviation becomes significant, the fund's board of directors may be required to take steps necessary to address this deviation, including re-pricing its shares at less than \$1.00.⁶ This is often referred to as "breaking the buck."

The risk-limiting conditions built into rule 2a-7, together with the management skill and, in some cases, the financial commitment of the advisers that sponsor money market funds, have contributed to the stability of money market funds for more than 30 years. Until recently, only one money market fund, a small institutional fund, had ever broken the buck.⁷ On September 16, 2008, The Reserve Primary Fund became the first large money market fund to break the buck when it announced that it would re-price its securities at \$0.97 per share. The fund sought and obtained from us an order permitting it to suspend redemptions and postpone the payment of redemption proceeds.⁸ These events, and the turmoil in the credit markets in general, have placed pressure on money market funds, particularly those that offer their shares primarily to institutional shareholders and have experienced substantial redemptions.⁹

⁴ Rule 2a-7(a)(2). Money market funds may also use the penny-rounding method of pricing to maintain a stable price per share. *See* rule 2a-7(a)(18).

⁵ Rule 2a-7(c)(7)(ii)(A).

⁶ *See* rule 2a-7(c)(7)(ii)(B) (requiring fund boards to "promptly consider what action, if any, should be initiated by the board of directors" if the deviation between a money market fund's market-based net asset value and amortized cost price per share exceeds ½ of 1 percent).

⁷ Community Bankers U.S. Government Money Market Fund broke the buck in 1994.

⁸ In the Matter of The Reserve Fund, Investment Company Act Release No. 28386 (Sept. 22, 2008) (order).

⁹ Between September 11th and September 17th, the assets of institutional money market funds fell by \$173 billion. *See* Investment Company Institute, *Money Market Mutual Fund Assets* (Sept. 18, 2008), http://www.ici.org/stats/mf/mm_09_18_08.html#TopOfPage.

To bolster investor confidence in money market funds and protect the stability of the global financial system, on September 19, 2008, the Treasury Department announced the establishment of the Guaranty Program.¹⁰ Under the Guaranty Program, the Treasury Department will guarantee the share price of participating money market funds that seek to maintain a stable net asset value of \$1.00 per share, or some other fixed amount, subject to certain conditions and limitations. The Guaranty Program provides coverage only to shareholders of record as of September 19, 2008, and the coverage is limited to the number of shares they held as of the close of business on that day. The Commission is assisting the Treasury Department in administering the Guaranty Program.

The Treasury Department opened the Guaranty Program on Monday, September 29, 2008. Most of the nation's money market funds elected to participate in the Program by the October 8, 2008 deadline by executing an agreement with the Treasury Department ("Guarantee Agreement" or "Agreement") and paying the required participation fee.¹¹

Under the terms of the Guaranty Program, the Treasury Department guarantees that, upon the liquidation of a participating money market fund, the fund's shareholders will receive the fund's stable share price of \$1.00 for each fund share owned as of September 19, 2008.¹² Pursuant to the Agreement, a participating money market fund that breaks the buck, *i.e.*,

¹⁰ See Press Release, U.S. Dep't of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), <http://www.treas.gov/press/releases/hp1147.htm>. The Program is backed by the Exchange Stabilization Fund, which currently has assets of approximately \$50 billion.

¹¹ The Guaranty Program is currently scheduled to terminate on December 18, 2008, unless the Secretary of the Treasury extends it, but in no event may the Program be extended beyond September 18, 2009. See sections 1(v), 3(a), and 3(b) of the Agreement. A form of the Guarantee Agreement is available at: http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee_Agreement_Stable-Value_Single-Fund.pdf.

¹² Sections 7(g) and 1(j) of the Agreement.

experiences a “Guarantee Event,”¹³ is required to commence liquidation within five business days (with an exception under a curing provision).¹⁴ The Agreement further requires the fund board to promptly suspend the redemption of its outstanding shares “in accordance with applicable Commission rules, orders and no-action letters.”¹⁵ The fund must be liquidated within thirty days after a Guarantee Event unless the Treasury Department, in its discretion, consents in writing to a later date (the “Liquidation Date”).¹⁶ These provisions are intended to ensure that the money market fund liquidates in an orderly manner and maximizes the proceeds realized from the disposition of the fund’s portfolio securities.¹⁷

II. DISCUSSION

A. Reason for the Exemption

Section 22(e) of the Investment Company Act prohibits funds, including money market funds, from suspending the right of redemption, or postponing the date of payment or satisfaction upon redemption of any redeemable security for more than seven days, except for certain periods specified in that section. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the

¹³ For funds that seek to maintain a stable net asset value per share of \$1.00, Section 1(i) of the Agreement defines a “Guarantee Event” as:

the first date after the Agreement Date on which the Market-Based NAV of the Fund is less than \$0.995...*provided, however*, that if a Guarantee Event occurs prior to the Execution Date, then the Guarantee Event shall be deemed to have occurred on the Execution Date, *provided, further*, that if the Market-Based NAV of the Fund is greater than or equal to \$0.995 on any date after such Guarantee Event but prior to the commencement of liquidation of the Fund as provided under Section 2(c)(iii)...subject to the delivery of the notice provided for in Section 2(g), the Guarantee Event will be deemed to have not occurred (a “Guarantee Cure Event”).

¹⁴ Sections 2(c) and 1(i) of the Agreement.

¹⁵ Section 7(a)(ii) of the Agreement.

¹⁶ Section 7(c) of the Agreement.

¹⁷ Section 7(a)(i) of the Agreement.

right of redemption, absent certain specified circumstances or a Commission order. However, in order for the Guaranty Program to operate as intended, a participating money market fund that experiences a Guarantee Event and must liquidate may need to suspend redemptions and postpone the payment of proceeds beyond the seven-day limit (specifically, until the Liquidation Date provided by the Agreement).

The temporary rule we are adopting today provides the necessary exemption to permit participating money market funds to take full advantage of the Program and initiate the steps necessary to protect the interests of all shareholders during liquidations, including those shareholders not covered by the Guaranty Program.¹⁸ Specifically, the rule is designed to facilitate orderly liquidations and help prevent the sale of fund assets at “fire sale” prices. Such a result could lead to substantial losses for the liquidating fund and further depress prices for short-term securities that may be held in the portfolios of other money market funds.

We are adopting the rule on an interim final basis because the Program is already in place and participating money market funds are currently subject to its liquidation provisions. In light of current market conditions, it is possible that a Guarantee Event could occur for a participating money market fund at any time. We could, alternatively, consider individual applications for orders under section 22(e) from funds that experience Guarantee Events. When the net asset value of a money market fund falls below \$1.00 per share and the fund decides to liquidate, however, redemption requests can outpace the fund’s ability to sell off its portfolio instruments and the Commission’s ability to grant a timely exemptive order. As a result,

¹⁸ As discussed above, the Guaranty Program covers only shareholders of record as of September 19, 2008, and the coverage is limited to the number of shares they held as of the close of business on that day.

consideration of individual applications for exemptive orders for funds that experience Guarantee Events would be impracticable.

The Commission finds that the interim final temporary rule is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 22(e) was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for “ulterior motives,” such as to prevent a reduction in management fees that would result from significant redemption requests.¹⁹ Liquidation of a money market fund under the Guaranty Program would ultimately eliminate a source of advisory fees for the adviser.²⁰ Section 22(e) also provides for suspending redemptions and postponing payment in certain specified circumstances or “for such other periods as the Commission may by order permit for the protection of security holders.”²¹ The temporary rule we are adopting today is intended to achieve the same purposes when a money market fund commences liquidation under the Guaranty Program.

B. Operation of Rule 22e-3T

The exemption from section 22(e) provided by rule 22e-3T is available to any money market fund that has a currently effective Agreement, subject to two other conditions.²² First, the fund must have delivered to the Treasury Department the required notice indicating that it has

¹⁹ *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 (“Senate Hearings”)* (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC).

²⁰ Moreover, the Guarantee Agreement would preclude a liquidation from relieving the adviser or any other affiliated person of the fund from their obligations to support the fund’s net asset value under any agreement in place at the time the Agreement is entered into by the fund. *See* sections 1(n) and 5(c) of the Guarantee Agreement.

²¹ Section 22(e)(3) of the Act.

²² Rule 22e-3T(a).

experienced a Guarantee Event and will promptly commence liquidation of the fund under the terms of the Agreement.²³ Second, the fund must not have cured the Guarantee Event, as provided under the terms of the Agreement.²⁴ In the event that a participating money market fund experiences a Guarantee Event and commences liquidation in compliance with the terms of the Agreement, the fund will be exempt from section 22(e).

The rule also provides that the Commission may rescind or modify the exemptive relief by order if necessary to protect the liquidating money market fund's security holders.²⁵ This provision permits the Commission to modify the relief if, among other things, a liquidating fund has not devised, or is not properly executing, a plan of liquidation that protects fund security holders. Under this provision, the Commission may modify the relief "after appropriate notice and opportunity for hearing," in accordance with section 40 of the Act.

The Program cannot extend beyond September 18, 2009. Under the terms of the Agreement, however, a money market fund has thirty days to liquidate. Accordingly, rule 22e-3T will expire on October 18, 2009.²⁶

III. REQUEST FOR COMMENT

The Commission requests comment on interim final temporary rule 22e-3T. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release. We seek comment generally on all aspects of the temporary rule. Are the conditions for relief adequate to protect the interests of security holders? Should the rule include additional

²³ Rule 22e-3T(a)(2). *See also* section 2(c) of the Agreement.

²⁴ Rule 22e-3T(a)(3). *See also* section 1(i) of the Agreement.

²⁵ Rule 22e-3T(b).

²⁶ The Commission may publish a notice in the Federal Register announcing an earlier expiration date for the rule if the Guaranty Program terminates before September 18, 2009.

conditions and, if so, what should those conditions be? Should the rule have a later or earlier expiration date and, if so, what should the expiration date be and why?

IV. OTHER MATTERS

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.²⁷ This requirement does not apply, however, if the agency “for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁸ The APA also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.²⁹ This requirement also does not apply, however, if the agency finds good cause for making the rule effective sooner.³⁰

For the reasons discussed in this release, we believe that we have good cause to act immediately to adopt this rule on an interim final temporary basis. The Treasury Department established the Program in response to extraordinary market turmoil and in recognition that maintaining confidence in money market funds is critical to protecting the integrity and stability of the global financial markets. The Program is currently operating to guarantee a large portion of existing money market fund assets. Immediate adoption of this rule will facilitate the Program and allow it to operate as designed. Without the relief provided by this rule, liquidating funds would not be able to promptly suspend redemptions and postpone the payment of proceeds without formally requesting and obtaining an individual exemption from the Commission, which could cause the funds to be inundated with redemption requests that they would have to meet in

²⁷ 5 U.S.C. 553(b).

²⁸ *Id.*

²⁹ 5 U.S.C. 553(d).

³⁰ *Id.*

As discussed above, the Guarantee Agreement requires money market funds to engage in an orderly liquidation upon experiencing a Guarantee Event. The Agreement further contemplates that funds will suspend the redemption of fund shares pending the liquidation. We believe it is necessary to provide an exemption from section 22(e) for funds participating in the Program to facilitate orderly liquidations.

A. Benefits

As discussed above, the rule will facilitate achievement of the benefits of the Guaranty Program by permitting participating money market funds to fulfill their obligations under the Agreement and initiate the steps necessary to effect an orderly liquidation. An orderly liquidation would protect value for fund shareholders and minimize disruption to financial markets. The rule would also provide certainty for participating funds, and enable funds to avoid the expense and delay of obtaining an exemptive order from the Commission.

B. Costs

Most of the costs associated with rule 22e-3T, such as the requirement to deliver to the Treasury Department a notice indicating that the money market fund has experienced a Guarantee Event, are necessitated by the Agreement. The rule may, however, impose some costs on shareholders who seek to redeem their shares, but are unable to do so. We believe the potential costs associated with rule 22e-3T are modest because the rule provides a narrow exemption that is only triggered in connection with the Guaranty Program and the exemption is only temporary.

C. Request for Comment

We request comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether rule 22e-3T will generate the anticipated benefits or impose any

other costs on funds or other market participants. We also request comment as to any costs or benefits associated with rule 22e-3T that we may not have considered here. Commenters are specifically invited to share quantified costs and benefits.

VII. CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.³³ We anticipate that the rule will promote efficiency in the financial markets by facilitating orderly liquidations. The rule also may promote capital formation by providing investors reassurance about the safety of money market funds and minimizing disruption in the financial markets. We do not anticipate any effect on competition. We request comment on whether rule 22e-3T is likely to promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VIII. REGULATORY FLEXIBILITY ACT CERTIFICATION

Section 3(a) of the Regulatory Flexibility Act (“RFA”)³⁴ requires the Commission to undertake an initial regulatory flexibility analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities.³⁵ Pursuant to section 605(b) of the RFA, the Commission

³³ 15 U.S.C. 80a-2(c).

³⁴ 5 U.S.C. 603(a).

³⁵ 5 U.S.C. 605(b).

hereby certifies that Investment Company Act rule 22e-3T does not have a significant impact on a substantial number of small entities.³⁶

Rule 0-10 of the Investment Company Act defines a “small entity” for purposes of the Act as 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. Rule 22e-3T applies only to funds participating in the Treasury Department’s Temporary Guaranty Program for Money Market Funds, and none of these funds meets the definition of a small entity under the Act.

We solicit comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide any empirical data.

IX. STATUTORY AUTHORITY

The Commission is adopting rule 22e-3T 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)].

List of Subjects

17 CFR Part 270

Investment companies; Securities.

TEXT OF RULE

For the reasons set out in the Preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 270--RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

³⁶ Although the requirements of the RFA do not apply to rules adopted under the APA’s “good cause” exception, *see* 5 U.S.C. 601(2) (defining “rule” and notice requirement under the APA), we have nevertheless provided this certification.

1. The authority citation for Part 270 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

Section 270.22e-3T is also issued under 15 U.S.C. 80a-6(c) and 80a-37(a).

* * * * *

2. Section 270.22e-3T is added to read as follows:

§ 270.22e-3T Temporary exemption for liquidation of certain money market funds.

(a) A registered investment company, or a series thereof (“fund”), is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a-22(e)) if:

(1) The fund has a currently effective agreement (“Agreement”) with the U.S. Department of the Treasury (“Treasury”) to participate in the Temporary Guaranty Program for Money Market Funds (“Program”);

(2) The fund has delivered to Treasury a notice indicating that it has experienced a guarantee event, and will promptly commence liquidation of the fund under the terms of the Agreement; and

(3) The fund has not cured the guarantee event as provided under the terms of the Agreement.

(b) For the protection of security holders of a fund, the Commission may issue an order to rescind or modify the exemption provided by this section as to that fund, after appropriate notice and opportunity for hearing in accordance with section 40 of the Act (15 U.S.C. 80a-39).

(c) This section will expire on October 18, 2009, unless the Commission publishes a notice in the Federal Register announcing an earlier termination date in connection with termination of the Guaranty Program.

By the Commission.

Florence E. Harmon
Acting Secretary

Dated: November 20, 2008