

July 17, 2012

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: The SEC's Public File on Money Market Fund Reform Options
File No. 4-619; Presidents Working Group Report on Money Market Fund
Reform**

Dear Chairman Schapiro:

We have reviewed the various letters, surveys, reports and other data collected in the Commission's public file for the 2010 Report of the President's Working Group: "Money Market Fund Reform Options (PWG Report)". As you know, the initial public comments addressed specific options for money market fund (MMF) reform put forward in the PWG Report, including a "floating" net asset value for MMFs. Later comment letters have addressed two additional options for restrictions on MMFs: imposing a capital requirement on MMFs; and imposing a "holdback" or minimum balance requirement. In your recent Senate testimony and in earlier speeches, you expressed support for each of these three proposed restrictions on MMFs as a way to reduce MMFs "susceptibility" to runs. We understand the Commission currently is considering a draft proposing release containing these three elements.

As you know, the Commission is required by statute to consider the impact of a proposed rule on efficiency, competition, and capital formation, and its failure to do so has resulted in several reversals of Commission rules by the D.C. Circuit Court of Appeals, which has been highly critical of the Commission's failure to assess the economic impact of proposed new rules. The Commission has responded to these cases and to similar criticism from the Congress, the General Accountability Office, and the Commission's own Inspector General by developing internal guidance for economic analysis in rule proposals. That guidance requires, among other things, that an analysis of the "likely economic consequences" of any proposed rule be "substantially complete" even before a rule is proposed.

The depth and scope of data, surveys and other information from commenters in the PWG Report file gives the Commission a unique opportunity to conduct this analysis before moving forward with a rulemaking proposal on MMFs. We, therefore, submit the attached summary of the public comment file in an effort to assist the Commission in assessing the potential economic consequences of each of the three proposals.

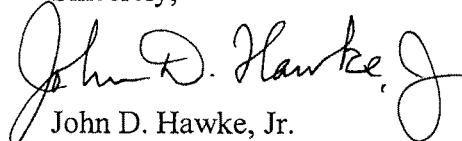
In reviewing the public comment file, what is striking is the multitude of comments by users of MMFs who describe the essential role MMFs play across a range of cash management operations for businesses and public entities, as well as the essential role of MMFs as purchasers of corporate commercial paper and state and local government debt. While one might expect the fund industry to participate vigorously in the debate over potential new restrictions on MMFs – and fund companies and the industry’s trade association have done so here by providing substantial data, analyses and surveys – the Commission also must give great weight to the fact that businesses, chambers of commerce, state and local governments and their associations across the country have written about the importance of MMFs in bringing efficiencies to their cash management operations and in substantially reducing their cost of funding. There is a consistent message from these users that they either will not use, or will sharply reduce their use of, MMFs if any of the three proposals are adopted, because the resulting product will no longer meet their investment needs. If that occurs, according to commenters, a shrunken MMF industry would result in increased cost of funding for businesses and governments and would be enormously costly for the economy. The public comment file also includes strong warnings that a flight of investors from MMFs to less regulated vehicles or to the largest banks would increase systemic risk and, therefore, bring about exactly the opposite result that proponents of the proposals desire.

As described in the attached summary, there are a handful of letters in the comment file – primarily from current or former bank regulators and academics – supporting one or more of the three types of potential new restrictions on MMFs. To date, there is no data or economic analysis in the public file to support the view that any of the proposals would reduce MMF runs, and, indeed, there are some studies and reports suggesting that the proposals, if adopted, could actually precipitate runs. The benefits of the proposals, therefore, remain speculative, while the adverse economic consequences – as articulated in the comments of MMF users – could be devastating.

We, therefore, suggest that moving forward with a rule proposal, which itself would create substantial uncertainty in the markets at a time when we can ill afford it, is ill-advised. At minimum, if there is, as reported, a staff draft release containing economic analysis in support of various proposals, that analysis should be publically vetted before a proposal is formally released. This is particularly important given the overwhelming evidence in the public file to date arguing against the proposals.

We hope the attached summary is helpful. We also hope the Commissioners will take the time to read the studies, surveys, reports and other commentary in the comment file in full before considering further actions to impose restrictions on MMFs.

Sincerely,


John D. Hawke, Jr.

Enclosure

cc: Hon. Luis A. Aguilar
Commissioner

Hon. Daniel Gallagher
Commissioner

Hon. Troy A. Paredes
Commissioner

Hon. Elisse B. Walter
Commissioner

Money Market Fund Reform Proposals

Public Comments on Economic Consequences

I. Overview of SEC Comment File; Rulemaking Criteria.

At a hearing before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on June 21, 2012 (Senate hearing), the Chairman of the Securities and Exchange Commission (SEC), Mary L. Schapiro, testified in support of imposing new restrictions on money market mutual funds (MMFs) through a rule proposal.¹ Her testimony confirmed statements she made last year that the rule proposal would include three elements: eliminating MMF's current stable net asset value (NAV), imposing a "holdback" or minimum balance requirement for MMF shareholders seeking to redeem their shares, and imposing capital requirements on MMFs.² Although the SEC has not yet proposed a rule, numerous corporate and public entity users of MMFs, as well as individual investors, treasury consultants, academics, sponsors of MMFs, and business and state and local government associations have submitted comments to the SEC in connection with the agency's request for comment on the 2010 report on MMF reform options by the President's Working Group on Financial Markets (PWG Report).³ Initial public comments addressed the various options for MMF reform put forward in the PWG Report; later comments have addressed proposals described by the SEC Chairman in public statements. As of July 13, 2012, more than 175 letters, studies, surveys, and other materials have been submitted and signed by over 260 commenters, including 78 associations representing more than 350,000 businesses and state and local government entities and officials. While a small number of commenters – primarily current and former bank regulators and academics – have supported additional limitations on MMFs, the overwhelming number of commenters have raised concerns about significant adverse impacts of the various proposals on users of MMFs and the economy. They have provided surveys, data, and reports in support of their views. At the Senate hearing, Chairman Schapiro stated that any SEC rule proposal would include supporting data and analysis, although no studies or data from the SEC have been published to date.

In reviewing the SEC's public file on MMFs, what is striking is the multitude of comments by users of MMFs who describe the essential role MMFs play across a range of cash management operations for businesses and public entities, as well as the essential role of MMFs as purchasers of corporate commercial paper and state and local government debt. Equally striking is the consistent message by users that they either will not use, or will sharply reduce

¹ *Perspectives on Money Market Mutual Fund Reform: Hearing Before the U.S. Senate Comm. on Banking, Housing and Urban Affairs*, 112th Cong. (Jun. 21, 2012) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

² Chairman Mary L. Schapiro, Remarks at Securities Industry and Financial Markets Association (SIFMA) 2011 Annual Meeting (Nov. 7, 2011) (Available: <http://www.sec.gov/news/speech/2011/spch110711mls.htm>). *See also* Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012) (Available: <http://www.sec.gov/news/speech/2012/spch031512mls.htm>).

³ Request for Comment, President's Working Group Report on Money Market Fund Reform, File No. 4-619 (Available: <http://www.sec.gov/comments/4-619/4-619.shtml>) (PWG Report).

their use of, MMFs if any of the SEC Chairman's three proposals are adopted. If that occurs, according to commenters, a shrunken MMF industry would result in increased cost of funding for businesses and governments and would be enormously costly for the economy. The public comment file also includes strong warnings that a flight of investors from MMFs to less regulated vehicles or to the largest banks would increase systemic risk and, therefore, bring about exactly the opposite result the rule proponents desire.

Statutory Requirements for Economic Analysis in SEC Rulemakings. The Administrative Procedure Act (APA) and special provisions of the Federal securities laws require the SEC to apply rigorous economic analysis to its rulemakings and, in particular, to examine the impact of a proposed rule on efficiency, competition, and capital formation.⁴ Indeed, the SEC's failure to conduct sufficient economic analysis in its rulemakings has led to reversals of SEC rules by the D.C. Court of Appeals in several recent cases, including the court's reversal last year of a rule expanding shareholder access to proxy statements.⁵ Like other agencies, the SEC also must consider significant issues raised by commenters; failing to consider and respond to public comments may render its actions in adopting a rule arbitrary and capricious.⁶

SEC Internal Requirements for Economic Analysis in Rulemakings. As the SEC considers whether to propose new rules for MMFs, it also must adhere to its own internal guidance for economic analysis in rulemakings, which it recently developed in response to substantial criticism by the D.C. Circuit, Congress, the GAO, and the SEC's own Inspector General that the SEC has failed adequately to consider the economic consequences of proposed rules.⁷ The guidance is set forth in a March 16, 2012 memorandum to the SEC's rulewriting divisions and offices from the Division of Risk, Strategy and Financial Innovation and the Office

⁴ National Securities Market Improvement Act of 1996, Pub. L. No. 104-290, § 106. The National Securities Market Improvement Act of 1996 added amendments to each of the major Federal Securities Laws (including the Investment Company Act) requiring the SEC to consider efficiency, competition, and capital formation whenever it is engaged in rulemaking that requires the agency to consider or determine whether an action is necessary or appropriate in the public interest. See Investment Company Act of 1940, § 2, 15 U.S.C. § 80a-2.

⁵ *Business Roundtable v. SEC*, 647 F. 3d 1144, 1148-49 (D.C. Cir. 2011) (“[T]he Commission has a unique obligation to consider the effect of a new rule upon ‘efficiency, competition, and capital formation,’ . . . and its failure to ‘appraise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation’ makes promulgation of the rule arbitrary and capricious and not in accordance with law. . . . We agree with the petitioners and hold the Commission acted arbitrarily and capriciously for having failed once again — as it did most recently in *American Equity Investment Life Insurance Company v. SEC*, and before that in *Chamber of Commerce [v. SEC]* — adequately to assess the economic effects of a new rule. Here the Commission inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters.” (internal citations omitted)).

⁶ *Business Roundtable*, 647 F. 3d at 1149. See also *Home Box Office, Inc. v. F.C.C.*, 567 F.2d 9, 35 (D.C. Cir. 1977) (“a dialogue is a two-way street: the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.”); *Louisiana Fed. Land Bank Ass'n, FLCA v. Farm Credit Admin.*, 336 F.3d 1075 (D.C. Cir. 2003) (affirming the same); *ACLU v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987) (quoting the same).

⁷ See *The SEC's Aversion to Cost-Benefit Analysis: Hearing Before the Subcomm. on TARP, Financial Services and Bailouts of Public and Private Programs of the H. Comm. on Oversight and Government Reform* (Apr. 17, 2012) (Available: <http://oversight.house.gov/hearing/the-secs-aversion-to-cost-benefit-analysis/>).

of General Counsel (Guidance Memorandum).⁸ It identifies four “basic elements of a good regulatory economic analysis” that every economic analysis in SEC rulemakings should include. Those elements are:

- (1) A statement of the need for the proposed action and an explanation of how the proposed rule will meet that need;
- (2) The definition of an appropriate economic baseline against which to measure the likely economic consequences of the proposed regulation – the “best assessment of how the world would look in the absence of the proposed action;”
- (3) Identification and evaluation of reasonable alternative regulatory approaches; and
- (4) An analysis of the likely economic consequences of the proposed rule and the principal regulatory alternatives.⁹

The Guidance Memorandum, which SEC Chairman Schapiro has said is binding on the agency,¹⁰ states that the economic analysis must be “substantially complete” even at the rule proposal stage.¹¹

Scope of this Paper. In applying the above rulemaking criteria to the MMF reform options under consideration by the SEC – a floating NAV for MMFs, a holdback on shareholder redemptions, and a capital requirement – this paper will identify the SEC Chairman’s own statements as to the need for further MMF reform and her statements as to how the proposals she favors would address those needs (element (1) of the rulemaking criteria), and then will report on how commenters in the SEC’s public file have described the likely economic consequences of the proposals (element (4)).¹²

While this paper will not address element (2) of the rulemaking criteria – the “present state of the world” with respect to MMFs against which the impact of any proposed rule must be measured – this subject is discussed throughout the comment letters and in statements by the regulators themselves.¹³ The comment letters describe the tremendous benefits MMFs bring to a

⁸ Division of Risk, Strategy, and Financial Innovation and Office of General Counsel, Securities & Exchange Commission, *Current Guidance on Economic Analysis in SEC Rulemakings* (Mar. 16, 2012) (unpublished memorandum).

⁹ *Id.* at 1-2.

¹⁰ *Oversight of the Securities and Exchange Commission: Hearing Before the Subcomm. on Capital Markets and Government Sponsored Enterprises of the H. Comm. on Financial Services*, 112th Cong. (Apr. 25, 2012) (Available: <http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=290689>).

¹¹ Guidance Memorandum at 16 (“The proposing release should include a substantially complete analysis of the most likely economic consequences of the rule proposal . . . [and] should include a discussion of any existing studies or data that bear on the proposal . . .”).

¹² Unless otherwise stated, all letters cited were filed in response to the SEC’s Request for Comment on the President’s Working Group Report on Money Market Fund Reform, File No. 4-619 (Available: <http://www.sec.gov/comments/4-619/4-619.shtml>) (PWG Report).

¹³ *See, e.g.*, PWG Report at 7 (“MMFs . . . offer individuals, businesses, and governments a convenient and cost-effective means of pooled investing in money market instruments [and] provide an economically important service by acting as intermediaries between shareholders who desire liquid investments, often for cash management, and

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wide range of institutions and individuals: institutions and governmental entities who use MMFs for cash management;¹⁴ investors who have obtained market rates of interest;¹⁵ corporate and state and local issuers who have sold commercial paper and tax-exempt debt to MMFs and thereby significantly lowered their cost of funding;¹⁶ and the federal government, which has

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borrowers who seek term funding. . . . MMFs are important providers of credit to businesses, financial institutions, and governments.”).

¹⁴ See, e.g., Letter from Utah Association of Counties to SEC (Jun. 27, 2012); Letter to SEC from Access Technology Systems, Alert Stamping & Mfg. Co., Inc., Alro Enterprises, LLC, Altus, Alydar Agency Inc., Association for Financial Professionals, Association of Washington Business, BARD Materials, BD Construction, Inc. / Kearney, Bear City Glass Co., Beaudoin Electrical Construction, Bellevue Drug Company, Inc., Black-Haak Heating, Brandywine Communications, Brooks Bridge Bar-B-Que and Cafe Inc., Burns Petroleum LLC, Business Services Etc, Inc., Cadence Design Systems, Inc., Captel, Castle Hunter Construction LLC, Center Sports, Inc., Classic Bars Inc., Conveyors Inc. Crafts, Etc., Crane Data, Crestview Taxi LLC, Cross Diamond Electric, Cruise Control Auto Care, D.O. Inc., Dennis Neuhaus Inc., Devon Energy, Diamond Rigging Corporation, Diversified Insurance Management, Downey-Goodlein Elevator Corporation, East Tennessee Section of AACE International, Easter Seals Northwest Alabama, Elite Insurance Agency, Inc., Eye Kraft Optical, Inc., Fairbanks Construction, Fairweather Medical Group, Financial Executives International Committee on Corporate Treasury, Financial Services Institute, FMC, Corp., Four Sons Quality Cleaners, G&R Sales & Service, George's Rental & Supply Inc., Georgetown Auto Parts, Global Tooling Solutions LLC, Greater Pittsburgh Chamber of Commerce, Greater Springfield Chamber of Commerce, Greg A. Parker, PE Consulting Engineer, Inc., Gymninny Kids, Inc., Hanweck Associates, LLC, Hastings Area Chamber of Commerce, Heart of the Valley Chamber of Commerce, Heating, Air-Conditioning and Refrigeration Distributors International, Henderson Area Chamber of Commerce, Hermiston Chamber of Commerce, Imperial Door Controls, Inc., Joe West Company, Johnson City/Jonesborough/Washington County (IN) Chamber, Kauai Nursery & Landscaping Inc., Kentucky Chamber of Commerce, Kerns Trucking, Inc., Kimmel Mechanical, Inc., Machine Repair & Design Inc., Magna Steel Sales Inc., Merck, Midland Area Chamber of Commerce, Mike's Body Shop, Mohawk Valley Chamber of Commerce, Monticello Strategies, National Association of College and University Business Officers, National Association of Corporate Treasurers, National Shooting Sports Foundation, Nevada Blue LTD, Noel Sebastian Consulting, North Carolina Chamber Outdoor Amusement Business Association, Inc., Oxford Financial Services LLC, P&H Farms, P.L. Gaetano Transportation Inc., Peninsular Mechanical Contractors, Inc., Pennsylvania Chamber of Business and Industry, Pharmacy Solutions, PHlofGA, Plastics and Concepts of Connect, Inc., Protective Security, Inc., Quality Marble, Inc., Red River Precision Manufacturing Inc., Regal Marketing Inc., Reiman Corp., Retail Industry Leaders Association, Retirement Strategies Group, LLC, Rowan County Chamber of Commerce, Safeway Inc., SASIND Aviation, Inc., Scott Metals, Inc., Selma Communications, SVC, Smith-Doyle Contractors, Inc., Smithville Communications, Inc., Southern Tank & Mfg Co Inc., Spin Techs Inc., Stallion Machine Shop LLC, Stewart Alexander & Company, Inc., Stowers Machinery Corporation, Texas Association of Business, The Boeing Company, The Witte Co, Inc., Timberville Drug Store Inc., Tioga Construction Co, Inc., Towne East Investments Properties, Treasury Strategies, Inc., Tri-State Financial Services, U.S. Chamber of Commerce, Visteon Corporation, Water Resource Engineering Associates, Weslyn Mfg., Inc., Wilhoite & Associates to SEC (May 31, 2012) (Letter from 119 Users, Chambers of Commerce, and Others) (describing MMFs as “crucial instruments for daily cash management” and instruments that “support[] the efficient operation of the U.S. economy” and stating further, “Businesses and municipalities rely heavily upon MMMFs as the preferred investment vehicle for short-term cash, allowing them to temporarily park excess cash in a stable and highly liquidity investment in anticipation of a need in the near future . . .”).

¹⁵ See, e.g., Letter from New York State Association of Counties to SEC (Jun. 20, 2012).

¹⁶ See, e.g., Letter from New York State Association of Counties to SEC (Jun. 20, 2012); Letter from American Public Power Association, Council of Development Finance Agencies, Council of Infrastructure Financing Authorities, Government Finance Officers Association, International City/County Managers Association, International Municipal Lawyers Association, National Association of Counties, National Association of Local Housing Financing Agencies, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National League of Cities, U.S. Conference of Mayors to SEC (Jan. 10, 2011)

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reaped substantial benefits from the participation of MMFs as purchasers of short-term Treasury securities and as participants in the repo market.¹⁷ The Treasurer of Safeway, testifying at the recent Senate hearing on behalf of the Chamber of Commerce, made comments typical of business groups' comments throughout the SEC's public file. He explained that the purchase of commercial paper by MMFs –

is vital to companies across America as commercial paper is an easy, affordable way to quickly obtain short-term financing. . . . As our working capital needs can change over the course of a week by as much as \$200 million, the ability to borrow overnight in the commercial paper market allows us to manage our position very efficiently.¹⁸

The Treasurer of the State of Maryland, testifying at the same Senate hearing on behalf of the National Association of State Treasurers, reiterated statements in the public file made by numerous state and local entities on the benefits of MMFs for cash management:

The State of Maryland averages between \$250 million and \$350 million in MMFs deposits on a daily basis for the operating fund depending on the fiscal year cycle. . . . Through the years the State has relied on MMFs for a safe place to put unexpected deposits that arrive late in the day until a more appropriate investment can be purchased and for daily liquidity for unexpected outflows or to cover failed delivery of expected incoming funds.¹⁹

Thus, the potential economic costs of any proposal to further limit MMFs must be measured against this baseline of substantial economic benefits provided by MMFs in their current form.

The “present state of the world” for MMFs also is reflected in the manner in which MMFs currently are operated and regulated under SEC Rule 2a-7 and other rules, as enhanced by amendments adopted and implemented by the SEC in 2010. Commenters in the SEC's public file, as well as witnesses in the recent Senate hearing, described the enhancements to MMFs under the 2010 reforms as providing a significantly more liquid, transparent, and resilient

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(Letter from 12 State and Local Entities). (“MMMFs are the largest investor in short-term municipal bonds, holding 65% of all outstanding short-term bonds equaling nearly \$500 billion.”).

¹⁷ See, e.g., Letter from Federated Investors to SEC (Jan. 7, 2011) (“[R]epo contributes to the unparalleled efficiency and liquidity of the market for U.S. Treasury and agency securities, which significantly reduces the borrowing costs for federal programs.”).

¹⁸ *Perspectives on Money Market Mutual Fund Reform: Hearing Before the U.S. Senate Comm. on Banking, Housing and Urban Affairs*, 112th Cong. (Jun. 21, 2012) (testimony of Brad Fox, Vice President and Treasurer of Safeway, Inc.) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

¹⁹ *Perspectives on Money Market Mutual Fund Reform: Hearing Before the U.S. Senate Committee on Banking, Housing and Urban Affairs*, 112th Cong. (Jun. 21, 2012) (testimony of Nancy Kopp, State Treasurer, Maryland) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

industry.²⁰ Thus, the baseline against which to measure whether there is even a need for new regulation must be the liquidity, transparency, and stability of the MMF world as of 2012, and not 2008.²¹

²⁰ See, e.g., Letter from Treasury Strategies to the SEC (Mar. 13, 2012) (stating that the 2010 amendments “addressed all three types of runs: credit-driven, liquidity-driven and speculative runs. The changes reduce the likelihood of a fund ‘breaking the buck’ due to a run and were executed in a way that did not destroy the money fund business.”); Letter from Fidelity Investments to SEC (Mar. 1, 2012) (providing data on MMFs’ current 7-day liquidity, which totaled over \$1.1 trillion according to Fidelity’s analysis, and other improvements as a result of the 2010 amendments). Numerous commenters urged regulators to defer action on further any changes to the regulation of MMFs until the recent amendments to Rule 2a-7 and other financial regulations have had their full effect. See Letter from Charles Schwab Investment Management to SEC (Apr. 6, 2012); Letter from Fidelity Investments to SEC (Mar. 1, 2012); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from New York Business Council to SEC (Jan. 14, 2011); Letter from Vanguard to SEC (Jan. 10, 2011); Letter from J.P. Morgan Asset Management (Jan. 10, 2011); Letter from Institutional Money Market Funds Association to SEC (Jan. 10, 2011); Letter from Mutual Fund Directors Forum to SEC (Jan. 10, 2011); Letter from Center for Securities, Trust and Investments of the American Bankers Association to SEC (Jan. 10, 2011); Letter from Treasury Strategies, Inc. (TSI) to SEC (Jan. 10, 2011); Letter from European Fund Asset Management Association to SEC (Jan. 10, 2011); Letter from Independent Directors Council to SEC (Jan. 10, 2011). See also *Perspectives on Money Market Mutual Fund Reform: Hearing Before the U.S. Senate Committee on Banking, Housing and Urban Affairs*, 112th Cong. (Jun. 21, 2012) (testimony of Nancy Kopp, State Treasurer, Maryland; testimony of Brad Fox, Vice President and Treasurer of Safeway, Inc.) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

²¹ See comments submitted by Charles Schwab to the International Organization of Securities Commissions (IOSCO) and filed with the SEC, stating, “[I]t is critically important that a careful analysis of the effectiveness of the 2010 amendments to Rule 2a-7 be undertaken before further reforms are considered.” Letter from Charles Schwab to IOSCO, filed with SEC (May 31, 2012). Fidelity Investments, in its IOSCO submission also filed with the SEC, described the effects of the SEC’s 2010 reforms, which “reduce the likelihood that U.S. MMFs will be forced to sell securities in times of market stress, which in turn reduces the risk of contagion.” Letter from Fidelity Investments to IOSCO, filed with SEC (May 30, 2012). Fidelity Investments also submitted to the SEC a detailed comparison of the average daily and weekly liquidity data both before and after the 2010 amendments, among other liquidity data, to show the enhanced liquidity of today’s MMFs. Letter from Fidelity Investments to SEC (Mar. 1, 2012). ICI also filed a comment that included extensive data demonstrating that MMFs are in a better position today to handle shareholder redemptions than they were in 2008, and indeed, that the funds performed far better when faced with high levels of redemptions in 2011. Letter from ICI to IOSCO, filed with SEC (May 25, 2012).

II. Statement of the Need for Regulatory Action and How the Proposed Rule Would Meet that Need.

Chairman Schapiro has made a number of statements on the need for new MMF regulation, as follows:

- “The stable \$1.00 share price has fostered an expectation of safety, although money market funds are subject to credit, interest-rate and liquidity risk. . . . As a result, when a fund breaks the dollar, investors lose confidence and rush to redeem.”²²
- “Investors don't appreciate that these are investments, these are not cash instruments, they're investments and when they break the buck, the impetus to run is enormous.”²³
- “Despite changes in the assets they hold, money market funds remain susceptible to a sudden deterioration in quality of holdings and, consequently, remain susceptible to runs.”²⁴
- “Investors have an incentive to redeem at the first sign of problems in a money market fund. . . . [Because] early redeemers tend to be institutional investors . . . who can commit resources to watch their investments carefully . . . a run on a fund will result in a wealth transfer from retail investors (including small businesses) to institutional investors.”²⁵
- “If all or many investors redeem at the same time, the fund will be forced to sell securities at fire sale prices, causing the fund to break a dollar, but also depressing prevailing market prices and thereby placing pressure on the ability of other funds to maintain a stable net asset value[,] . . . instigating a pernicious cycle building quickly towards a more generalized run on money market funds.”²⁶
- “[Money market funds] have a structural weakness that makes them susceptible to runs that can devastate our entire economy.”²⁷

²² *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Comm. on Banking, Housing, and Urban Affairs*, 112th Cong. 10 (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

²³ *Oversight of the Securities and Exchange Commission: Hearing Before the Subcomm. on Capital Markets and Government Sponsored Enterprises of the H. Comm. on Financial Services* (Apr. 25, 2012) (archive of hearing webcast) (Available: <http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=290689>).

²⁴ Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012).

²⁵ *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, 112th Cong. 10-11 (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66f4ddb5-4823-4341-bad9-8f99cdf5fe9a).

²⁶ *Id.*

²⁷ *Oversight of the Securities and Exchange Commission: Hearing Before the Subcomm. on Capital Markets and Government Sponsored Enterprises of the H. Comm. on Financial Services* (Apr. 25, 2012) (archive of hearing webcast) (Available: <http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=290689>).

- “[I]nvestors believe that there will be [sponsor] support because history has shown us that in hundreds of instances, funds have stepped in to do that.”²⁸
- “Money market funds have no committed source of stability to draw upon, except for the discretionary support of their sponsors. This support may be there, or it may not.”²⁹
- “[T]he taxpayer [should] never be on the hook again for these instruments as they were in 2008.”³⁰

Chairman Schapiro also has described how she believes each of the three proposals she favors would address these issues. For example, she has stated that a *floating NAV* would “reinforce what money market funds are – an investment product”³¹ and would “cause shareholders to become accustomed to fluctuations in the funds’ share prices, and thus less likely to redeem en masse if they fear a loss is imminent, as they do today.”³² She has stated that an “express and transparent *capital buffer* would make explicit what for many . . . money market funds is implicit today: namely that there is a source of capital available to the fund in times of emergency,”³³ which “would increase money market funds’ ability to suffer losses without breaking the buck [and permit] . . . money market funds to sell some securities at a loss to meet redemptions during a crisis.”³⁴ *Limitations or fees on redemptions* combined with capital requirements, according to Chairman Schapiro, would “make it less likely that the funds will not be able to absorb a loss and cause a run.”³⁵ For example, “If a large credit event occurred, the

²⁸ *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs* (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (archive of hearing webcast) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

²⁹ Chairman Mary L. Schapiro, Remarks at SIFMA’s 2011 Annual Meeting (Nov. 7, 2011).

³⁰ *Id.* Note that the Emergency Economic Stabilization Act of 2008 precludes the Department of the Treasury from creating a MMF guarantee program. See Pub. L. No. 110-343, § 131. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 prevents the Federal Reserve from providing aid to a failing financial institution or lending to an insolvent company. See Pub. L. No. 111-203, § 1101.

³¹ Chairman Mary L. Schapiro, Remarks at SIFMA’s 2011 Annual Meeting (Nov. 7, 2011).

³² *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs* (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0). See also Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012) (A floating NAV would “desensitize investors to the occasional drop in value” of MMFs.).

³³ Chairman Mary L. Schapiro, Remarks at SIFMA’s 2011 Annual Meeting (Nov. 7, 2011). See also Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012).

³⁴ *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs*, 112th Cong. 13 (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

³⁵ Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012).

buffer could help manage the loss and additional redemption restrictions or fees could slow the run, possibly supplement the capital and dramatically reduce the contagion to other funds and the system.”³⁶

However, to date, the SEC has provided no survey or other data supporting the view that investors believe there is “implicit” support for MMFs or that they are unaware of the small fluctuations in underlying market value of MMF shares. Indeed, available surveys provide a contrary view regarding investor expectations of a guarantee,³⁷ and each fund’s shadow NAV – clearly reflecting fluctuations in the underlying valuation of the MMF – is published monthly on the websites of each MMF and the SEC. Moreover, the SEC has offered no empirical or survey data supporting the proposition that a floating NAV would make MMF investors less likely to run.³⁸ Indeed, the evidence suggests that floating NAV funds experienced the same type of runs during the financial crisis that stable NAV MMFs experienced.³⁹ In order to justify requiring MMFs to float their NAVs, the SEC will need to provide data demonstrating the benefits of such a change – namely, that the change would reduce the likelihood of MMF runs. If the SEC does not “support its predictive judgments,” with respect to the impact of a floating NAV, it may find itself yet again on the losing end of another rule challenge.⁴⁰

With respect to capital, it would be simple to demonstrate mathematically how varying levels of capital might absorb a particular MMF portfolio loss, and we would expect the SEC to provide such examples in a proposing release. However, the SEC to date has offered no empirical data with regard to the impact of a capital buffer on investor perceptions and behavior. This is a critical factor in weighing whether to go forward with such a requirement, because

³⁶ *Perspectives on Money Market Mutual Fund Reforms: Hearing Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs* (Jun. 21, 2012) (Testimony of Chairman Mary L. Schapiro) (archive of hearing webcast) (Available: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bba4146c-6b7f-47d0-93bc-ebc73189c9c0).

³⁷ See Letter from Fidelity Investments to SEC (Feb. 3, 2012). According to Fidelity’s survey, 75% of retail investors surveyed understood that MMFs are not guaranteed by a government entity. Only 11% of those surveyed believed MMF were guaranteed, while 14% were unsure. See also Letter from National Association of State and Local Treasurers to SEC (Dec. 21, 2010) (stating that the National Association of State and Local Treasurers (NAST) “does not accept the [PWG Report’s] statement that investors believe that money market funds are ‘risk free cash equivalents.’ On the contrary, NAST believes that investors realize that money market funds have an inherent risk, albeit a small one.”) (internal citations omitted). These issues are addressed further below.

³⁸ Numerous commenters have made this point, or have cited evidence and data to the contrary. See Letter from John D. Hawke, Jr. to Financial Stability Oversight Council, filed with SEC (Dec. 15, 2011); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from Cincinnati Chamber to SEC (Jan. 13, 2011); Letter from the ICI to SEC (Jan. 10, 2011); Letter from Crane Data LLC to SEC (Jan. 10, 2011); Letter from SIFMA to SEC (Jan. 10, 2011); Letter from Institutional Money Market Funds Association to SEC (Jan. 10, 2011); Letter from SVB Financial Group to SEC (Jan. 10, 2011); Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from Fidelity to SEC (Jan. 10, 2011).

³⁹ See Letter from Fish and Roiter to SEC (Dec. 2, 2011) (stating that variable NAV funds in Europe and ultra-short bond funds in the U.S. (which have variable NAVs) experienced similar levels of redemptions during the financial crisis as U.S. stable NAV funds). The data in the Fish and Roiter letter is discussed in greater detail in Section III.A (“*Comments Regarding Lack of Empirical Data to Support Proposal*”).

⁴⁰ See *Business Roundtable v. SEC*, 647 F. 3rd 1148-49 (D.C. Cir. 2011).

some commenters have challenged the view that a capital buffer would mitigate the incentive to run and have stated their view that it would accelerate, rather than prevent, runs.⁴¹ SEC Commissioner Daniel M. Gallagher also has warned that “the level of capital required to legitimately backstop the [money market] funds would effectively end the industry,” and a capital buffer at a level that could be supported by the industry “could simply create the illusion of protection, and further obscure the well-disclosed risk of investing” in MMFs.⁴² In other words, investor reliance on the buffer, which Chairman Schapiro views as one of its primary benefits, could be a significant cost of the proposal, according to Commissioner Gallagher.

While it also would be possible to perform a mathematical calculation of the effects of a holdback requirement under various redemption scenarios, the SEC will need to address survey and other data in the comment file showing that many investors will not remain in funds with holdback features, as well as comments that a holdback requirement would accelerate, rather than prevent, runs as investors will redeem at the first sign of market unease, even from ultimately healthy funds, in order to have access to 100% of their cash.⁴³ If the SEC “fail[s] to respond to substantial problems raised by commenters,” this also could form the basis for a rule challenge.

Finally, the SEC also will need to start from the appropriate baseline in determining both the need for, and impact of, a proposed rule. Here, it appears that Chairman Schapiro’s statements regarding the “susceptibility” of MMFs to runs and investors’ incentives to “run at the first sign of a problem” are based primarily, if not entirely, on the September 2008 experience, during the height of the financial crisis and prior to implementation of the SEC’s 2010 reforms. As the public comments demonstrate, MMFs continue to be a highly transparent investment product, carrying very minimal but well-disclosed risk, with substantial liquidity designed to meet redemptions in a manner that will not result in a “fire sale” of securities, and subject to a range of other restrictions designed to address investor protection and risk concerns, such as board oversight and reforms in the 2010 amendments permitting MMF directors to suspend redemptions when liquidating a fund to alleviate the “first mover” issue.⁴⁴ The SEC will need to

⁴¹ See, e.g., Letter from Treasury Strategies to SEC (Mar. 19, 2012) (“If a capital buffer existed, investors would be more likely to view an MMF as a deposit rather than an investment. This would attract an investor class that is *more* likely to flee at the first sign of distress or rumor, thus *increasing* the likelihood of a run.” (emphasis in original)).

⁴² Commissioner Daniel M. Gallagher, Remarks at the U.S. Chamber of Commerce: SEC Reform After Dodd-Frank and the Financial Crisis (Dec. 14, 2011) (Available: <http://www.sec.gov/news/speech/2011/spch121411dmg.htm>); see also Letter from Federated Investors to SEC (May 6, 2011).

⁴³ See Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117). After a survey of its customers, BlackRock commented, “[T]he most telling input we received from clients was that they believed this approach would *increase* their likelihood of running in a financial crisis. Many of them told us that with a portion of their balance held back for 30 days *and* subordinated [to satisfy the first losses in the fund], they would choose to redeem much sooner – at the slightest sign of nervousness in the markets.” *Id.*

⁴⁴ See, e.g., Letter from Fidelity Investments to SEC at Exhibit 4 (Mar. 1, 2012); Letter from Independent Directors Council to SEC (Jan. 10, 2011) (“[P]olicymakers should keep in mind that all money market funds are overseen by a board of directors, composed primarily of independent directors. . . . Among other things, directors approve the

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weigh fully whether the speculative benefits of the three types of proposals under consideration are worth the cost of dramatically shrinking the MMF industry and directing investor funds to institutions and products that are less transparent and generate potentially higher systemic risks.

III. Reports, Surveys, and Other Comments From the Public File.

While the benefits of the three options for MMF reform described above are speculative and, at this date, the public has not been provided data demonstrating that the proposals would reduce the likelihood of a MMF run, the SEC's comment file contains ample evidence of the adverse economic consequences of each of the three proposals. Public comments addressing each of the three options are summarized below.

A. Comments on Floating NAV Proposal.

A small number of commenters, primarily current and former bank regulators and academics, supported some type of floating NAV requirement, but none provided any data in support of the theory that it would reduce the likelihood of MMF runs. The FRB Richmond supported requiring all MMFs to use floating NAVs, asserting that floating NAVs would help prevent runs and address expectations of government support.⁴⁵ The Shadow Financial Regulatory Committee, a group of economists primarily associated with academia, suggested the SEC should adopt a floating NAV model for institutional money funds.⁴⁶ Former Federal Reserve Chairman Paul Volcker advocated a two-tiered approach in which funds choosing to keep stable NAV valuation would be treated as special purpose banks, whereas other funds would move to a floating NAV.⁴⁷ Former Treasury Secretary Henry M. Paulson, Jr. commented that “[t]he SEC should explore whether fund managers should move from a fixed NAV, which makes money market funds resemble insured bank accounts, to a floating NAV,” because as MMF users “saw slight variations in principal, they would have a tangible indication that they

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procedures for periodic stress testing of the fund's ability to maintain a stable NAV based on hypothetical events. ... Directors also would play a key role if a money market fund were at imminent risk of 'breaking the buck.' If directors make certain determinations, a fund may suspend redemptions and postpone payment of redemption proceeds in order to facilitate an orderly liquidation of the fund. This critically important new authority is intended to reduce the vulnerability of investors to the harmful effects of a run on a fund and minimize the potential for disruption of the securities markets.”).

⁴⁵ Letter from FRB Richmond to SEC (Jan. 10, 2011).

⁴⁶ Letter from the Shadow Financial Regulatory Committee to SEC (Feb. 14, 2011). A two-tier system of stable NAV MMFs for retail investors and floating NAV MMFs for institutional investors received little support, primarily due to the difficulties associated with the use of floating NAV MMFs described herein. One commenter pointed out that floating NAV MMFs are available now, but are not popular. *See* Letter from Treasury Strategies to SEC (Jan. 10, 2011). In any event, according to commenters, implementing a two-tier system would not solve the problem of runs on MMFs. *See* Letter from SVB Financial Group to SEC (Jan. 10, 2011); Letter from The Dreyfus Corporation to SEC (Jan. 10, 2011). Commenters also noted that it would be difficult to differentiate retail investors from institutional investors. *See* Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from Independent Directors Council to SEC (Jan. 10, 2011). Moreover, many of the ultimate investors in “institutions” are retail investors. Letter from Invesco to SEC (Jan. 10, 2011). Even the FRB Richmond noted that it would be difficult and expensive to create and apply regulations in this context.

⁴⁷ Letter from Paul Volcker to SEC (Feb. 11, 2011).

were not investing in a bank account.”⁴⁸ One comment letter from an advisory group suggested a “dual-NAV” structure that would require funds to publish daily NAVs up to the fourth decimal place while allowing shares to be traded at “rounded NAVs” up to the second decimal place.⁴⁹ Asset manager BlackRock, which opposed a floating NAV in a 2011 submission to the SEC,⁵⁰ shifted its position and expressed qualified support for the floating NAV for prime MMFs as an option less harmful than other proposals under consideration (a redemption restriction or a capital requirement).⁵¹ BlackRock also stated, however, “[w]e continue to believe that a floating NAV will not eliminate the risk of runs” in MMFs.⁵² Thrivent Financial for Lutherans suggested that a two-tiered structure could be implemented in which stable NAV funds would be required to have access to external liquidity, insurance, or sponsor support.⁵³ Deutsche Asset Management also expressed support for the two-tiered approach.⁵⁴

The overwhelming number of letters from businesses, municipalities, state and local government authorities, and the associations representing them opposed requiring MMFs to use a floating NAV on the grounds that it would hinder cash management operations, raise borrowing costs, and cause unintended market disruption. The PWG Report itself highlighted a number of these concerns. The PWG Report warned that adopting a floating NAV would make MMFs a less desirable or even useless product for certain kinds of investors, the redemptions from which may cause deleterious and unintended consequences to a variety of users and credit markets as a whole.⁵⁵

Impact on Cash Management Operations. Nearly every commenter opposing the floating NAV wrote that forcing MMFs to abandon the stable NAV would eliminate the MMF as a viable cash management tool by destroying its principal liquidity function. These commenters include both users and issuers, state and local government officials, local and regional chambers

⁴⁸ Letter from Henry M. Paulson, Jr. to SEC (Feb. 22, 2012).

⁴⁹ Letter from Capital Advisors Group to SEC (Apr. 2, 2012). Although characterized as a dual-NAV system, the Capital Advisors Group’s proposal is essentially a call for more frequent disclosure of shadow NAVs (which currently occurs on a delayed monthly basis), rather than a floating NAV requirement. According to the comment letter, more frequent and precise NAV disclosure would eliminate information asymmetries in underlying asset values, which it argues are a primary cause for shareholder runs. Under the proposal MMFs would continue to transact using stable NAVs.

⁵⁰ Letter from BlackRock to SEC (Jan. 10, 2011).

⁵¹ Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117) (highlighting the significant tax complications of moving to a floating NAV, the burden placed on accounting systems, as well as the impending disruption to short-term credit markets).

⁵² *Id.*

⁵³ Letter from Thrivent Financial for Lutherans to SEC (Jan. 10, 2011).

⁵⁴ Letter from Deutsche Asset Management to SEC (Jan. 10, 2011). An additional commenter stated that a floating NAV “is a viable option. But it would not be my first choice.” Letter from John M. Winters to SEC (Jan. 5, 2011) (emphasis in original).

⁵⁵ PWG Report at 21.

of commerce, asset managers, and the industry groups that represent them. Many users, both institutional and individual, stated that MMFs, because of their stable NAV feature, are essential to their cash management strategies.⁵⁶

User Responses to a Floating NAV. Some commenters reported the results of investor surveys undertaken to size the impact of forcing MMFs to adopt a floating NAV:

- Fidelity Investments, the largest MMF manager in the United States, surveyed both its institutional and retail MMF investors. Of retail investors surveyed, 74% stated a preference to keep the stable NAV, and 47% said they would decrease or discontinue use of MMFs if they adopted a floating NAV. Of institutional investors surveyed, 89% stated a preference to keep the stable NAV, while 57% said they would decrease or discontinue use of MMFs if they adopted a floating NAV.⁵⁷
- In a wide ranging survey of institutional MMF users commissioned by the Investment Company Institute (ICI), the national industry association representing the U.S. investment companies, Treasury Strategies, a treasury management consulting firm, found that forcing MMFs to adopt floating NAVs would drive a large portion of current users out of the MMF market. Of the more than 200 corporate, government, and other institutional users of MMFs surveyed, 79% said they would decrease or stop using MMFs

⁵⁶ Letter from Utah Association of Counties to SEC (Jun. 27, 2012); Letter from North Carolina Independent Colleges and Universities to SEC (Apr. 13, 2012); Letter from Association for Financial Professionals, Benefit Resource, Inc., Blue Cross Blue Shield of Massachusetts, CacheMatrix, Catholic Health Initiatives, California ISO, CareSource, Centerline Capital Group, Crawford & Company, Grass Valley USA LLC, Miami-Dade County Public Schools, Solix, Inc., University of Colorado – Treasurer’s Office, and WellCare Health Plans, Inc. to SEC (Apr. 4, 2012) (Letter from Association for Financial Professionals and 13 other organizations); Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letters from 12 State and Local Entities to SEC (Mar. 8, 2012 and Jan. 10, 2011); Letter from Greater Raleigh Chamber to SEC (Feb. 28, 2012 and Jan. 31, 2011); Letter from Bob Maddox to SEC (Feb. 7, 2012); Letter from New Hampshire College & University Council to SEC (Jan. 12, 2012); Letter from Washington State Treasurer to SEC (Nov. 15, 2011); Letter from New Jersey Association of Counties (Jul. 11, 2011); Letter from Greater Albuquerque Chamber of Commerce to SEC (Feb. 7, 2011); Letter from Florida Department of Financial Services to SEC (Feb. 3, 2011); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from Association of Commerce and Industry, New Mexico to SEC (Jan. 31, 2011); Letter from Providence Chamber of Commerce to SEC (Jan. 31, 2011); Letter from Greater Durham Chamber of Commerce to SEC (Jan. 31, 2011); Letter from New Mexico Association of Counties to SEC (Jan. 28, 2011); Letter from Florida Chamber of Commerce to SEC (Jan. 28, 2011); Letter from North Carolina Chamber of Commerce to SEC (Jan. 25, 2011); Letter from American Association of State Colleges and Universities to SEC (Jan. 21, 2011); Letter from Texas Municipal League to SEC (Jan. 21, 2011); Letter from Utah State Treasurer to SEC (Jan. 20, 2011); Letter from New Jersey Chamber of Commerce (Jan. 18, 2011); Letter from Northern Rhode Island Chamber of Commerce to SEC (Jan. 15, 2011); Letter from the Mayor of Salt Lake City, Utah to SEC (Jan. 13, 2011); Letter from National Association of State and Local Treasurers to SEC (Dec. 21, 2010). *See also* Letter from Independent Directors Council & Mutual Fund Directors Forum to SEC (May 2, 2012); Letters from John D. Hawke, Jr. on behalf of Federated Investors (Mar. 19, 2012 and Dec. 15, 2011); Letter from SunGard Global Network to SEC (Mar. 16, 2012); Letter from DST Systems to SEC (Mar. 2, 2012); Letter from Cachematrix to the SEC (Dec. 12, 2011); Letter from Fisch & Roiter to SEC (Dec. 2, 2011). *See also* Letter from Cachematrix to the SEC (Apr. 29, 2011).

⁵⁷ Letter from Fidelity Investments to SEC (Feb. 3, 2012).

if the fund had a floating NAV. Of that number, 44% said they would stop using MMFs entirely, and a full 72% said they would decrease use by more than half.⁵⁸

Costs of Overhauling Existing Accounting, Trading, and Settlement Systems. Other commenters pointed out that the cost of overhauling accounting, trading, and settlement systems to accommodate the floating NAV would be substantial for those users able to stay in the MMF market.⁵⁹ Cachematrix, a software provider of online institutional trading systems for banks and financial institutions, stated,

[A]n entire industry has programmed accounting, trading and settlement systems based on a stable share price. The cost for each bank to retool their sub-accounting systems to accommodate a fluctuating NAV could be in the millions of dollars. This does not take into account the costs that each bank would then pass on to the thousands of corporations that use money market trading systems.⁶⁰

The ICI commented,

Accounting standards setters aren't likely to grant cash-equivalent status to floating-value money market funds, which means institutions would have to track and reflect any fluctuations in shares' values on their books. Individuals and many institutional investors would have to regard every money market fund transaction as a potentially taxable event, and funds would have to build reporting systems to track gains and losses in the pennies. In short, the fact that money market funds could float means that investors, funds, and intermediaries have to be prepared that they *will* float. Changing the nature of these funds from stable to floating would force funds and investors to adapt, build new accounting systems, and overhaul their cash management-whether the funds' value actually fluctuates or not. The result would be heavy costs.⁶¹

A joint letter of the Allegheny Conference on Community Development and the Greater Pittsburgh Chamber of Commerce explained, “[f]loating the NAV would undermine the convenience and simplicity of using [MMFs] by adding new tax, accounting and legal hurdles.”⁶² Indeed, commenters stated that a floating NAV could create difficulties for all MMF investors by making every MMF sale a tax-reportable event.⁶³

⁵⁸ Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies).

⁵⁹ Letter from Allegheny Conference and Greater Pittsburgh Chamber to SEC (Apr. 24, 2012); Letter from Association for Financial Professionals and 13 other organizations to SEC (Apr. 4, 2012); Letter from John D. Hawke, Jr. to SEC (Mar. 19, 2012); Letter from ICI to SEC (Feb. 16, 2012); Letter from Cachematrix to the SEC (Dec. 12, 2011).

⁶⁰ Letter from Cachematrix to the SEC (Dec. 12, 2011).

⁶¹ Letter from ICI to the SEC (Apr. 13, 2012).

⁶² Letter from Allegheny Conference and Greater Pittsburgh Chamber to SEC (Apr. 24, 2012).

⁶³ Letter from Donald Brundrett to SEC (Mar. 24, 2012); Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letter from SunGard Global Network to SEC (Mar. 16, 2012); Letter from Washington State Treasurer to SEC

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Range of Business Functions Affected. Former Comptroller of the Currency John D. Hawke, Jr., writing on behalf of Federated Investors, described how a floating NAV would disrupt numerous business applications that run on automated accounting and settlement systems designed for same-day settlement and rely upon a stable NAV.⁶⁴ He said that the effect on business and public accounting processes will be far-reaching and at a minimum will include: trust accounting systems at bank trust departments, corporate payroll processing, corporate and institutional operating cash balances, federal, state and local government cash balances, municipal bond trustee cash management systems, consumer receivable securitization cash processing, escrow processing, custody cash balances and investment manager cash balances, 401(k) and 403(b) employee benefit plan processing, broker-dealer and futures dealer customer cash balances, and cash management type accounts at banks and broker-dealers. He cautioned that these processes would all have to undergo significant and costly retooling in the absence of stable NAV MMFs.

Effect of Statutory Prohibitions and Investment Restrictions Precluding Use of Funds other than Stable Value Funds. Many commenters warned that a floating NAV would preclude certain investors, who are permitted to invest only in stable NAV funds, from investing in MMFs.⁶⁵ The PWG Report explained the problem: “internal investment guidelines may prevent corporate cash managers from investing in floating NAV funds, some state laws allow

Footnote continued from previous page

(Nov. 15, 2011); Letter from Financial Services Institute to SEC (Jan. 10, 2011); Letter from FSC Securities Corporation to SEC (Jan. 10, 2011); Letter from Fidelity Investments to SEC (Jan. 10, 2011); Letter from Wells Fargo Funds Management to SEC (Jan. 10, 2011); Letter from Treasury Strategies to SEC (Jan. 10, 2011); Letter from Royal Alliance Associates to SEC (Jan. 7, 2011); Letter from Letter from SagePoint Financial to SEC (Jan. 7, 2011). *See also* PWG Report at 21 (noting the “loss of accounting convenience and tax efficiencies” resulting from the move to a floating NAV).

⁶⁴ Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Mar. 19, 2012). Mr. Hawke is also a former Under Secretary of the Treasury for Domestic Finance. *See generally* PWG Report at 21 (noting the “loss of accounting convenience and tax efficiencies” resulting from the move to a floating NAV).

⁶⁵ Letter from Indiana County Treasurers Association to SEC (Apr. 25, 2012); Letter from Allegheny Conference and Greater Pittsburgh Chamber to SEC (Apr. 24, 2012); Letters from the ICI to SEC (Apr. 19, 2012 and Jan. 10, 2011); Letter from Association for Financial Professionals and 13 other organizations; Letter from Metropolitan Mayors Caucus to SEC (Mar. 28, 2012); Letters from 12 State and Local Entities to SEC (Mar. 8, 2012 and Jan. 10, 2011); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from John D. Hawke, Jr. to Financial Stability Oversight Council, filed with the SEC (Dec. 15, 2011); Letter from Fisch & Roiter to SEC (Dec. 2, 2011); Letter from the Financial Services Roundtable to SEC (Jun. 30, 2011); Letter from Colorado County Treasurers’ Association to SEC (Jun. 21, 2011); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from Greater Boston Chamber of Commerce to SEC (Jan. 28, 2011); Letter from Texas Municipal League to SEC (Jan. 21, 2011); Letter from American Public Power Association, Council of Development Finance Agencies, Council of Infrastructure Financing Authorities, Government Finance Officers Association, International City/County Managers Association, International Municipal Lawyers Association, National Association of Counties, National Association of Local Housing Financing Agencies, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National League of Cities, and U.S. Conference of Mayors to SEC (Jan. 10, 2011) (Letter from 22 Issuers and Associations); Letter from Fidelity Investments to SEC (Jan. 10, 2011); Letter from FSC Securities Corporation to SEC (Jan. 10, 2011); Letter from Royal Alliance Associates to SEC (Jan. 7, 2011); Letter from SagePoint Financial to SEC (Jan. 7, 2011); Letter from Port of Houston Authority to SEC (Jan. 6, 2011); Letter from Tom Welch to SEC (Dec. 26, 2010).

municipalities to invest only in stable-value funds, and fiduciary obligations may prevent institutional investors from investing client money in floating NAV funds.”⁶⁶

Undertaking to size the potential disruption to institutional investors (who include Fortune 500 corporations, states, localities, and major fund managers), Treasury Strategies found that 33% of corporate, government, and other institutional users surveyed currently are subject to investment policies, laws, or other restrictions prohibiting them from investing in floating NAV products.⁶⁷ A joint letter from twelve state and local entities elaborated on the potential disruption: “[M]any governments have specific policies that mandate stable values, and money market funds are to be used for their short-term investments due to the fixed NAV. MMFs are a popular cash management tool because they are highly regulated, have minimal risk, and are easily booked. If the SEC were to adopt a floating NAV for MMFs, the organizations [co-signing this letter] expect that many, if not all, of their members would divest a significant percentage of their MMFs.”⁶⁸

Impact on Costs of Debt Financing. Dozens of commenters stated that forcing MMFs to adopt a floating NAV, thereby eliminating or reducing the utility of MMFs for many users, would contract the market for, and raise the costs of, short-term public and private debt financing.⁶⁹ Some of these commenters noted that MMFs hold almost 40% of outstanding

⁶⁶ PWG Report at 21.

⁶⁷ Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies).

⁶⁸ Letter from 12 State and Local Entities to SEC (Jan. 10, 2011).

⁶⁹ Letter from 33 Members of Congress to SEC (May 1, 2012) (Available: http://www.preservemoneymarketfunds.org/wp-content/uploads/2012/05/Congress_Letter_to_SEC_5-1-12_13359658551.pdf). This letter, addressed to Chairman Schapiro from 33 Members of the House of Representatives, was not posted by the SEC in its public file on the PWG report on MMFs. This is surprising, in light of the importance of Congressional views on agency action on matters of public interest. The letter is particularly significant in light of the experiences of its various signatories, all of whom served as officials of state or local governments and in the letter express their views of the importance of MMFs to such entities. The following Members of Congress signed the letter: Congressman Richard E. Neal (D-MA), Congressman Tom Reed (R-NY), Congressman James P. Moran (D-VA), Congressman Frank C. Guinta (R-NH), Congressman Gerald E. Connolly (D-VA), Congressman David Schweikert (R-AZ), Congressman Michael E. Capuano (D-MA), Congressman Steve Chabot (R-OH), Congressman Gary Peters (D-MI), Congressman Aaron Schock (R-IL), Congressman Jim Himes (D-CT), Congressman Phil Roe, MD (R-TN), Congressman David Cicilline (D-RI), Congressman Mike Coffman (R-CO), Congressman Henry Cuellar (D-TX), Congresswoman Lynn Jenkins (R-KS), Congressman John Carney (D-DE), Congresswoman Cynthia Lummis (R-WY), Congressman Brian Higgins (D-NY), Congressman James B. Renacci (R-OH), Congressman Martin Heinrich (D-NM), Congressman Adam Kinzinger (R-IL), Congressman Albio Sires (D-NJ), Congressman Kenny Marchant (R-TX), Congressman Bill Pascrell (D-NJ), Congressman Steve Stivers (R-OH), Congressman John Larson (D-CT), Congressman Bill Posey (R-FL), Congressman Sam Farr (D-CA), Congressman Jeff Fortenberry (R-NE), Congressman Todd Rokita (R-IN), Congressman Mike Fitzpatrick (D-PA), and Congressman Mike Kelly (R-PA). *See also* Letter from Utah Association of Counties to SEC (Jun. 27, 2012); Letter from New York State Association of Counties to SEC (Jun. 20, 2012); Letter from 33 Members of Congress to SEC (May 1, 2012); Letter from Allegheny Conference and Greater Pittsburgh Chamber to SEC (Apr. 24, 2012); Letter from Association for Financial Professionals and 13 other organizations to SEC (Apr. 4, 2012); Letter from Mutual Fund Directors Forum to SEC (Mar. 29, 2012); Letter from Metropolitan Mayors Caucus to SEC (Mar. 28, 2012); Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letters from 12 State and Local Entities to SEC (Mar. 8, 2012 and Jan. 10, 2011); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from Northern Kentucky Chamber of Commerce to SEC (Jan. 20, 2012); Letter from John D. Hawke, Jr. to Financial Stability Oversight Council, filed with SEC (Dec. 15,

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commercial paper, roughly two-thirds of short-term state and local government debt, and significant portions of outstanding short-term Treasury and federal agency securities.⁷⁰ A letter signed by 33 Members of Congress who are all former state and local officials pointed out, “Any reduction in demand for money market funds would reduce demand for the securities issued by state and local governments and purchased by MMFs. As a result, states and municipalities would be deprived of a critical funding source and would be faced with increasing debt issuance costs.”⁷¹ The PWG Report acknowledged that a floating NAV “might reduce investor demand for MMFs and thus diminish their capacity to supply credit to businesses, financial institutions, state and local governments, and other borrowers who obtain financing in short-term debt markets.”⁷² Fidelity Investments estimated that for municipal issuers, the amount of annual interest paid by these entities to fund their operations would increase by billions of dollars if MMFs ceased to be significant purchasers, and that the federal government similarly would have to pay billions more in annual interest to finance its short-term debt.⁷³

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2011); Letter from New Jersey Association of Counties (Jul. 11, 2011); Letter from the Financial Services Roundtable to SEC (Jun. 30, 2011); Letters from Utah League of Cities and Towns to SEC (May 10, 2012 and Jan. 11, 2011); Letter from Greater Albuquerque Chamber of Commerce to SEC (Feb. 7, 2011); Letter from New Jersey Business & Industry Association to SEC (Feb. 7, 2011); Letter from Florida Department of Financial Services to SEC (Feb. 3, 2011); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from Greater Raleigh Chamber to SEC (Jan. 31, 2011); Letter from Association of Commerce and Industry, New Mexico to SEC (Jan. 31, 2011); Letter from Providence Chamber of Commerce to SEC (Jan. 31, 2011); Letter from Greater Durham Chamber of Commerce to SEC (Jan. 31, 2011); Letter from New Mexico Association of Counties to SEC (Jan. 28, 2011); Letter from Greater Boston Chamber of Commerce to SEC (Jan. 28, 2011); Letter from Florida Chamber of Commerce to SEC (Jan. 28, 2011); Letter from Rhode Island Economic Development Corporation to SEC (Jan. 26, 2011); Letter from North Carolina Chamber of Commerce to SEC (Jan. 25, 2011); Letter from American Association of State Colleges and Universities to SEC (Jan. 21, 2011); Letter from Texas Municipal League to SEC (Jan. 21, 2011); Letter from New Jersey Chamber of Commerce (Jan. 18, 2011); Letter from Northern Rhode Island Chamber of Commerce to SEC (Jan. 15, 2011); Letter from New York Business Council to SEC (Jan. 14, 2011); Letter from the Mayor of Salt Lake City, Utah to SEC (Jan. 13, 2011); Letter from Cincinnati Chamber to SEC (Jan. 13, 2011); Letter from J.P. Morgan Asset Management to SEC (Jan. 10, 2011); Letter from Kentucky State Treasurer to SEC (Jan. 10, 2011); Letter from 22 Issuers and Associations to SEC (Jan. 10, 2011); Letter from FSC Securities Corporation to SEC (Jan. 10, 2011); Letter from SIFMA to SEC (Jan. 10, 2011); Letter from Associated Industries of Florida to SEC (Jan. 10, 2011); Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from Fidelity Investments to SEC (Jan. 10, 2011); Letter from Kentucky Chamber of Commerce to SEC (Jan. 10, 2011); Letter from Dallas Regional Chamber to SEC (Jan. 10, 2011); Letter from Professor Jonathan Macey to SEC (Jan. 8, 2011); Letter from Royal Alliance Associates to SEC (Jan. 7, 2011); Letter from SagePoint Financial to SEC (Jan. 7, 2011); Letter from Cincinnati/Northern Kentucky International Airport to SEC (Jan. 7, 2011); Letter from Port of Houston Authority to SEC (Jan. 6, 2011); Letter from National Association of State and Local Treasurers to SEC (Dec. 21, 2010).

⁷⁰ This data originally appeared in the PWG Report at 7.

⁷¹ Letter from 33 Members of Congress to SEC (May 1, 2012).

⁷² PWG Report at 21.

⁷³ Letter from Fidelity Investments to SEC (Jan. 10, 2011).

Potential Destabilization of Markets. Commenters warned that the process of switching to a floating NAV would destabilize the short-term credit markets⁷⁴ and create volatility.⁷⁵ The PWG Report stated that the very shift to a floating NAV could cause major disruptions: “MMFs are the dominant providers of some types of credit, such as commercial paper and short-term municipal debt, so a significant contraction of MMFs might cause particular difficulties for borrowers who rely on these instruments for financing. If the contraction were abrupt, redemptions might cause severe disruptions for MMFs, the markets for the instruments the funds hold, and borrowers who tap those markets.”⁷⁶

Consequences of Forcing Users to Less Regulated and Less Transparent Products. Commenters, including current and former state and local government officials, warned that forcing MMFs to move to a floating NAV would leave resource-strapped public treasurers without the safely managed investment option of MMFs.⁷⁷ One group of twelve state and local entities, representing thousands of municipalities, agencies, and officials throughout the U.S. warned that if the SEC required MMFs to float their NAVs, it would force many of their members to look at “competing products that could be more susceptible to market conditions, more difficult to account for and manage, and may pose market risk. That would contrast sharply with the SEC’s goals, particularly since many of those competing products don’t provide investors with the same transparency and comprehensive regulatory protections as MMMFs.”⁷⁸

Numerous additional commenters warned that a floating NAV for MMFs would motivate investors to shift assets to riskier or unregulated cash-management vehicles once MMFs no longer meet the liquidity requirements of institutional and retail investors using MMFs for their short-term cash management needs.⁷⁹ The Kentucky Chamber of Commerce, representing over

⁷⁴ Letter from Cachematrix to the SEC (Dec. 12, 2011); Letter from ICI to SEC (Jan. 10, 2011); Letter from National Association of State and Local Treasurers to SEC (Dec. 21, 2010).

⁷⁵ Letter from American Association of State Colleges and Universities to SEC (Jan. 21, 2011); Letter from the ICI to SEC (Jan. 10, 2011).

⁷⁶ PWG Report at 21.

⁷⁷ Letter from 33 Members of Congress to SEC (May 1, 2012); Letter from Indiana County Treasurers Association to SEC (Apr. 25, 2012); Letter from Metropolitan Mayors Caucus to SEC (Mar. 28, 2012); Letters from 12 State and Local Entities to SEC (Mar. 8, 2012 and Jan. 10, 2011); Letter from Washington State Treasurer to SEC (Nov. 15, 2011).

⁷⁸ Letter from 12 State and Local Entities to SEC (Mar. 8, 2012).

⁷⁹ Letter from New York State Association of Counties to SEC (Jun. 20, 2012); Letters from Vanguard to SEC (Jun. 4, 2012 and Jan. 10, 2011); Letter from Charles Schwab to IOSCO, filed with SEC (May 31, 2012); Letter from Invesco to IOSCO, filed with SEC (May 25, 2012); Letter from Independent Directors Council & Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from 33 Members of Congress to SEC (May 1, 2012); Letter from Association for Financial Professionals and 13 other organizations to SEC (Apr. 4, 2012); Letters from Mutual Fund Directors Forum to SEC (Mar. 29, 2012 and Jan. 10, 2011); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from State Street Corporation to SEC (Feb. 24, 2012); Letter from the ICI to SEC (Feb. 16, 2012); Letter from Northern Kentucky Chamber of Commerce to SEC (Jan. 20, 2012); Letter from the Financial Services Roundtable to SEC (Jun. 30, 2011); Letter from New Jersey Business & Industry Association to SEC (Feb. 7, 2011); Letter from New Hampshire College and University Council to SEC (Jan. 21, 2011); Letter from American Association of State Colleges and Universities to SEC (Jan. 21, 2011); Letter from New York Business Council to SEC (Jan. 14, 2011); Letter from Financial Services Institute to SEC (Jan. 10, 2011); Letter from J.P. Morgan Asset Management to SEC (Jan. 10, 2011); Letter from Fidelity Investments to SEC (Jan. 10, 2011); Letter from European Fund and Asset Management Association to SEC (Jan. 10, 2011); Letter from SIFMA to SEC (Jan. 10, 2011); Letter

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2,000 businesses and 250,000 workers, noted that a regulatory change that would drive investors to less-regulated funds “is hardly consistent with efforts to reduce risk, increase market transparency and ensure greater market stability.”⁸⁰ The PWG Report stated the problem as follows:

[E]limination of MMFs’ stable NAVs may cause investors to shift assets to stable NAV substitutes that are vulnerable to runs but subject to less regulation than MMFs. In particular, many institutional investors might move assets to less regulated or unregulated cash management vehicles, such as offshore MMFs, enhanced cash funds, and other stable value vehicles that hold portfolios similar to those of MMFs but are not subject to the [Investment Company Act’s] restrictions on MMFs.⁸¹

Impact of Increasing Bank Deposits, Adding to Systemic Risk. Several commenters argued that a reduction in MMF holdings would push many investors to banks, exacerbating the banks’ need for capital and concentrating risks in that sector.⁸² Professors Jill Fisch, of the University of Pennsylvania Law School, and Eric Roiter, of the Boston University School of Law, stated in a lengthy analysis of the performance of stable and floating NAV funds, “Eliminating MMFs as an alternative to bank deposits means greater concentration of risk in the one sector of our financial system that history has indisputably shown to be most prone to systemic risk, the banks.”⁸³ One large asset manager stated, “[i]t is our belief that banks have neither the infrastructure nor the profit incentive based on minimum leverage capital requirements to provide short-term funding to the economy in the way that money market funds do through the purchase of commercial paper and other short-term debt instruments.”⁸⁴ Further, commenters noted that any large scale shift of assets to banks would strain the federal safety net, to the extent those deposits are insured by the FDIC.⁸⁵

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from SVB Financial Group to SEC (Jan. 10, 2011); Letter from Kentucky State Treasurer to SEC (Jan. 10, 2011); Letter from Independent Directors Council to SEC (Jan. 10, 2011); Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from Wells Fargo Funds Management to SEC (Jan. 10, 2011); Letter from Goldman Sachs Asset Management (Jan. 10, 2011); Letter from National Association of State and Local Treasurers to SEC (Dec. 21, 2010).

⁸⁰ Letter from Northern Kentucky Chamber of Commerce to SEC (Jan. 20, 2012).

⁸¹ PWG Report at 21-22.

⁸² Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from Fidelity Investments to IOSCO, filed with SEC (May 30, 2012); Letter from the Financial Services Roundtable to SEC (Jun. 30, 2011); Letter from New York Business Council to SEC (Jan. 14, 2011). *See generally* PWG Report at 33-34.

⁸³ Letter from Fisch & Roiter to SEC at 31 (Dec. 2, 2011).

⁸⁴ Letter from BlackRock to SEC (Jan. 10, 2011).

⁸⁵ Letters from Fidelity Investments to IOSCO, filed with SEC (May 30, 2012); Letter from Fidelity Investments to SEC (Jan. 10, 2011); Letter from Invesco to SEC (Jan. 10, 2011); Letter from Professor Jonathan Macey to SEC (Jan. 8, 2011).

Potential for Precipitating Runs. Several commenters warned that moving to a floating NAV could cause the very run regulators are seeking to avoid.⁸⁶ As the PWG Report stated,

MMFs' transition from stable to floating NAVs might itself be systemically risky. For example, if shareholders perceive a risk that a fund that is maintaining a \$1 NAV under current rules has a market-based shadow NAV of less than \$1, these investors may redeem shares preemptively to avoid potential losses when MMFs switch to floating NAVs. Shareholders who cannot tolerate floating NAVs probably also would redeem in advance. If large enough, redemptions could force some funds to sell assets and could make concerns about losses self-fulfilling. Hence, successful implementation of a switch to floating NAVs would depend on careful design of the conversion process to guard against destabilizing transition dynamics.⁸⁷

One investment adviser expressed similar concerns, warning that the shift “could precipitate a destabilizing flood of preemptive withdrawals by investors seeking to guarantee the return of their principal. This would bring about the very result that the measure was intended to prevent in the first place: a run on funds triggering a liquidity crisis and potentially destabilizing financial markets through widespread, forced sales of portfolio holdings.”⁸⁸ Another commenter argued that far from desensitizing investors to minor price movements, “investors may be more price sensitive to an NAV that fluctuates.”⁸⁹

Comments Regarding Lack of Empirical Data to Support Proposal. A number of commenters pointed out that although the primary justification for moving to a floating NAV is to reduce the susceptibility of the funds to runs, there is no empirical evidence to support this view.⁹⁰ Indeed, the evidence suggests floating NAV funds do experience runs. Professors Fisch and Roiter argued that the performance of ultra-short bond funds during the financial crisis should give the SEC pause:

Ultra-short bond funds are a near equivalent to money market funds but for the fact that they maintain a floating NAV. . . . While their share of assets pales in comparison to MMFs, ultra-short bond funds faced waves of redemptions comparable in respective magnitude to what MMFs faced. Indeed, contractions

⁸⁶ Letter from Invesco to IOSCO, filed with SEC (May 25, 2012); Letter from ICI to SEC (Jan. 10, 2011); Letter from T. Rowe Price to SEC (Jan. 10, 2011); Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from The Dreyfus Corporation to SEC (Jan. 10, 2011).

⁸⁷ PWG Report at 22.

⁸⁸ Letter from Invesco Advisors to SEC (Jan. 10, 2011).

⁸⁹ Letter from Vanguard to SEC (Jan. 10, 2011).

⁹⁰ Letter from John D. Hawke, Jr. to Financial Stability Oversight Council, filed with the SEC (Dec. 15, 2011); Letter from Fisch & Roiter to SEC (Dec. 2, 2011); Letter from Jacksonville Chamber to SEC (Jan. 31, 2011); Letter from Cincinnati Chamber to SEC (Jan. 13, 2011); Letter from the ICI to SEC (Jan. 10, 2011); Letter from Wells Fargo Funds Management to SEC (Jan. 10, 2011); Letter from Crane Data LLC to SEC (Jan. 10, 2011); Letter from SIFMA to SEC (Jan. 10, 2011); Letter from Institutional Money Market Funds Association to SEC (Jan. 10, 2011); Letter from SVB Financial Group to SEC (Jan. 10, 2011); Letter from Invesco Advisors to SEC (Jan. 10, 2011); Letter from Fidelity to SEC (Jan. 10, 2011).

of ultra-short bond funds likely exacerbated the freeze in the short term credit markets. By the end of 2008, assets in these funds were 60% below their peak level in 2007. In Europe, both types of money market funds – those with stable NAVs and those with floating NAVs – have co-existed for years. Floating NAV money market funds suffered substantial redemptions during the credit crisis in 2008, leading more than a dozen of them to suspend redemptions temporarily and four of them to close altogether. French floating NAV money market funds lost about 40% of their assets during a three month period in the summer of 2007.⁹¹

Fidelity Investments stated, “We are not aware of empirical evidence to support the belief that in a period of market turmoil, funds with VNAVs would be at lower risk of significant redemptions from shareholders. In fact, during the financial crisis, VNAV funds in Europe experienced redemption pressures similar to CNAV funds.”⁹²

B. Comments on Capital Requirement Proposal.

If MMFs are required to hold capital, the source of the capital could be (1) the fund’s sponsor, (2) the fund’s shareholders, or (3) the market, through the issuance of debt or a subordinated equity class.⁹³

A small number of commenters supported some form of capital for MMFs. A consortium of academic economists known as the Squam Lake Group proposed that MMF sponsors hold a class of subordinated equity totaling a few percent of the assets of each fund, possibly sold to third party investors, who would take the first losses in fund, without impacting the rest of the fund’s investors.⁹⁴ Another academic proposed a similar two class structure which would further require distinguishing between institutional funds (in which institutional investors would be required to buy the loss-bearing subordinated shares) and retail funds (in which sponsors would be required to buy the loss-bearing subordinated shares).⁹⁵ A letter from Fidelity Investments, Charles Schwab, and Wells Fargo last year proposed a small capital buffer, “to the extent the Commission and other federal financial regulators believe that more regulation of

⁹¹ Letter from Fisch & Roiter to SEC (Dec. 2, 2011). *See also* Letter from Institutional Money Market Funds Association to SEC (Jan. 10, 2011).

⁹² Letter from Fidelity Investments to IOSCO, filed with the SEC (May 30, 2012) (citing Stephen Jank and Michael Wedow, *Sturm und Drang in Money Market Funds: When Money Market Funds Cease to Be Narrow*, Deutsche Bundesbank Discussion Paper, Series 2: Banking and Financial Studies, No. 20/2008).

⁹³ Chairman Mary L. Schapiro, Remarks at SIFMA’s 2011 Annual Meeting (Nov. 7, 2011). In discussing a possible capital requirement, Chairman Schapiro also said the SEC was examining the appropriate size of any capital buffer, and she acknowledged the challenge of establishing a “capital buffer that offers meaningful protection against unexpected events, without over-protecting and unnecessarily interfering with the prudent and efficient portfolio management of the fund.” She further acknowledged the challenges of developing reforms in this area in a low interest rate environment.

⁹⁴ Letter from Squam Lake Group to SEC (Jan. 14, 2011).

⁹⁵ Letters from Professor Jeffrey N. Gordon to SEC (Jul. 3, 2012 and Aug. 12, 2011). As the PWG Report pointed out, proposals such as this one would require the additional step of defining who would qualify as retail and institutional investors, and “distinguishing those categories will present challenges.” PWG Report at 6.

[MMFs] is necessary.”⁹⁶ However, Fidelity subsequently provided the SEC with research data demonstrating the effectiveness of the 2010 amendments and stated, based on the data, “[W]e strongly believe that additional regulation of money market funds is neither necessary nor desirable.”⁹⁷ Schwab also submitted a letter “urg[ing] the Commission to undertake a larger study of the 2010 amendments before proposing additional reforms.”⁹⁸

Others who commented on the subject of capital buffers opposed the capital requirement and argued that the costs would outweigh any potential benefits.

Creation of Moral Hazard for MMF Managers. Treasury Strategies filed a report with the SEC in which it stated, “adding a capital requirement to funds places increased pressure on fund managers to drive yield. In order to meet this pressure, managers will have to either extend maturities or add credit risk.”⁹⁹

In its report, Treasury Strategies cited two empirical studies demonstrating moral hazard in the deposit insurance context: a 2000 study that found “explicit deposit insurance tends to be detrimental to bank stability;”¹⁰⁰ and a more recent study finding that “banks take on higher risk in the presence of explicit insurance and hence that explicit deposit insurance has generated moral hazard incentive for banks.”¹⁰¹ Treasury Strategies stated that there is an “obvious parallel” between a MMF capital requirement and FDIC deposit insurance: “Just as insurance can change the behavior of the insured, a capital requirement will encourage fund advisers to buy riskier investments, as they seek higher yields to increase assets under management.”¹⁰²

Creation of Moral Hazard for Investors. The Treasury Strategies report stated that the “guaranteed” return of principal implied by a capital requirement promotes the false notion that MMFs are deposits, increasing moral hazard from the investor’s perspective as well.¹⁰³ A letter filed by John D. Hawke, Jr. on behalf of Federated Investors explained that MMF disclosures

⁹⁶ Letter from Fidelity Investments, Charles Schwab, and Wells Fargo Funds Management to SEC (Apr. 29, 2011) (Joint Fund Letter). These commenters suggested the NAV buffer would be built up over time by withholding a portion of investor yield. The purpose of the buffer would be to permit funds to sell securities at a loss to meet investor redemptions during times of stress without breaking the buck, and help funds withstand price volatility of portfolio securities caused by credit concerns in the market.

⁹⁷ Letter from Fidelity Investments to SEC (Mar. 1, 2012).

⁹⁸ Letter from Charles Schwab Investment Management to SEC (Apr. 6, 2012). One additional investment manager advocated a 1% capital reserve but did not elaborate on the reasons for his support. Letter from Nathaniel Pulsifer to SEC (May 17, 2012)

⁹⁹ Letter from Treasury Strategies to SEC (Mar. 19, 2012). *See also* Letter from Federated Investors to SEC (May 6, 2011).

¹⁰⁰ Letter from Treasury Strategies to SEC (Mar. 19, 2012) *citing* Asli Demirgüç-Kunt and Enrica Detragiache, *Does Deposit Insurance Increase Banking System Stability? An Empirical Investigation*, April 2000.

¹⁰¹ Letter from Treasury Strategies to SEC (Mar. 19, 2012) *citing* Isabelle Distigui, Tchudjane Kouassi, Amine Tarazi, *Bank Deposit Insurance, Moral Hazard and Market Discipline: Evidence from Central and Eastern Europe*, June 2011.

¹⁰² Letter from Treasury Strategies to SEC (Mar. 19, 2012).

¹⁰³ *Id.*

currently advise shareholders that their investments are not guaranteed, which “creates an incentive for investors not to chase yield, but instead to consider the quality of the investment portfolio of the Money Fund.”¹⁰⁴ With a capital buffer in place, according to Mr. Hawke, investors lose that incentive and instead benefit most from investing in the riskiest fund with the greatest yield.¹⁰⁵ According to commenters, this feedback loop of risky incentives will significantly undercut the gains made through the 2010 amendments by increasing systemic risk.¹⁰⁶

Comments Stating that a Capital Buffer is Unnecessary. According to an analysis provided by Fidelity Investments, MMFs currently hold more than \$1 trillion in 7-day liquidity, many times the amount required to satisfy shareholder redemptions during the September 2008 crisis (\$310 billion) and the June through August 2011 period of the European debt crisis and U.S. debt ceiling debate (\$172 billion).¹⁰⁷ Fidelity stated, “[t]he large liquidity cushions now required by Rule 2a-7 have mitigated risk without imposing exceedingly costly unintended consequences.”¹⁰⁸ Because the 2010 reforms are working to lessen the incentive to run and now require funds to have sufficient levels of liquidity to meet shareholder redemptions during periods of market stress, Fidelity said additional reforms, including a capital requirement, are unnecessary.

Impact of Capital in Accelerating Runs. A number of commenters stated that a capital buffer would accelerate, rather than prevent, runs. Treasury Strategies stated that a capital requirement could change both the expectations and nature of investors in MMFs: “If a capital buffer existed, investors would be more likely to view an MMF as a deposit rather than an investment. This would attract an investor class that is *more* likely to flee at the first sign of distress or rumor, thus *increasing* the likelihood of a run.”¹⁰⁹

According to commenters, once a capital buffer is instituted, speculative runs by investors will begin when the buffer is first drawn upon, rather than when a fund breaks the buck.¹¹⁰ A comment letter filed by Professors Fisch and Roiter explained the likely outcome this way: once an MMF taps the capital buffer in an effort to avoid breaking the buck, “investors are put on notice that the fund might not be able to sustain its \$1 NAV. Knowing that the capital buffer is limited (somewhere between, perhaps, 0.5% to 3% of NAV), investors might have an *extra* incentive to redeem before the cushion is exhausted, thereby aggravating rather than reducing problems of collective action.”¹¹¹

¹⁰⁴ Letter from John D. Hawke, Jr. to SEC (Feb. 24, 2011).

¹⁰⁵ *Id.*

¹⁰⁶ Letter from Treasury Strategies to SEC (Mar. 19, 2012); Letter from John D. Hawke, Jr. to SEC (Feb. 24, 2011).

¹⁰⁷ Letter from Fidelity Investments to SEC (Mar. 1, 2012).

¹⁰⁸ *Id.*

¹⁰⁹ Letter from Treasury Strategies to SEC (Mar. 19, 2012) (emphasis original).

¹¹⁰ Letter from Treasury Strategies to SEC (Mar. 19, 2012); Letter from Fidelity Investments to SEC (May 5, 2011); Letter from Jill Fisch and Eric Roiter to SEC (Dec. 2, 2011).

¹¹¹ Letter from Fisch & Roiter to SEC (Dec. 2, 2011).

User Responses to Capital Requirement. In a broad survey of institutional MMF users commissioned by the ICI, Treasury Strategies found that the institution of a capital buffer will drive a large portion of current users out of the MMF market.¹¹² Of the more than 200 institutional users of MMFs surveyed, 36% said they would decrease or stop using MMFs if the fund contained a capital buffer. Of those, 35% said they would stop using MMFs entirely. Even the survey respondents who said they would continue using MMFs upon the institution of a capital buffer showed little tolerance for loss of yield. More than half of those users would divest given a 2 basis point loss, and 92% would divest at 5 basis points.

Consequences of Pushing Investors to Less Regulated Vehicles for Greater Yield. Many commenters warned that a capital buffer that reduced yields would motivate investors to abandon MMFs in search of higher yields elsewhere, including in unregulated and less transparent vehicles.¹¹³ In particular, a group of 33 Members of Congress who are all former state and local government officials expressed concern that the Commission's additional reforms, including the capital requirement, "would alter the fundamental structure of MMFs and would, in turn, lead investors to other less-regulated products."¹¹⁴ A joint letter from the Independent Directors Council and the Mutual Fund Directors Forum stated the same concern, noting that reduced yields will make MMFs "substantially less attractive to investors" and result in a shift to alternative products.¹¹⁵

Impact of Driving MMF Sponsors from the Business. Commenters stated that a capital requirement would drive many sponsors of MMFs out of the business.¹¹⁶ Treasury Strategies commented, "A capital requirement of 50 basis points (0.50%), if applied against all MMFs, would total \$12.5 billion. Given today's ultra-low interest environment, it would not be feasible to build the buffer by retaining a portion of the customer yield. As a result, the requirement would fall to the fund sponsors. They would also be responsible for replenishing the capital, should any losses be incurred within the portfolio. From the sponsors' perspective, that is tantamount to providing a blanket guarantee on the entire fund. Their only logical alternative is to exit the business."¹¹⁷

¹¹² Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies).

¹¹³ Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies); Letter from State Street to SEC (Feb. 24, 2012); Letter from Northern Kentucky Chamber to SEC (Jan. 20, 2012). *See also* PWG Report at 34 (stating that "a substantial mandatory capital buffer for MMFs would reduce their net yields and possibly motivate institutional investors to move assets from MMFs to unregulated alternatives (particularly if regulatory reform does not include new constraints on such vehicles).").

¹¹⁴ Letter from 33 Members of Congress to SEC (May 1, 2012).

¹¹⁵ Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012).

¹¹⁶ Letter from Invesco to IOSCO, filed with SEC (May 25, 2012); Letter from Treasury Strategies to SEC (Mar. 19, 2012); Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹¹⁷ Letter from Treasury Strategies to SEC (Mar. 19, 2012). BlackRock commented, "[A]bove approximately 70 basis points of capital, the money market industry will no longer return the industry cost of capital to fund sponsors .

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ICI undertook a detailed review and data analysis of two possible sources of funding for a capital buffer: requiring fund sponsors to commit capital or having funds build a capital buffer from fund income.¹¹⁸ ICI found the following:

- Assuming the buffer would come from fund sponsors, “all advisers would expect to earn a market rate of return on such capital. If they cannot earn that rate of return, they would seek better business alternatives, such as moving investors to less-regulated cash management products where investors still must bear the risks of investing.”¹¹⁹ The ICI further observed that the rate of return on capital contributed would have to be quite large, because although the likelihood of potential losses in a money market fund is very low, the *percentage* losses on its small capital investment could be large in the event the buffer must be tapped. Assuming a 1.5 to 3 percent buffer, the funds’ current fee structure and current market conditions, ICI calculated that recouping the buffer would take every dollar of at least 8 to 20 years of advisers’ profits from the fund. In the alternative, advisers would be forced to raise fund fees between 16 and 40 basis points to achieve a market rate of return on pledged capital.
- If a buffer were to come from withheld shareholder yield, ICI calculated it would take a prime MMF 10 to 15 years to raise a 0.5 percent buffer given plausible assumptions about future interest rates, the reaction of investors to the buildup of the buffer, and the willingness of fund advisers to continue to absorb fee waivers. Under the “best of circumstances,” ICI calculated the 0.5 percent buffer would take at least 5 years to buildup.¹²⁰

The Securities Industry and Financial Markets Association further explained, “If the level of required capital cannot be sustained by the marketplace, the result of a capital requirement would be to severely curtail the availability of money market funds, eliminating an attractive cash management option for investors, likely prompting a shift to less heavily regulated investment vehicles which pose more systemic risk, and eliminating a source of financing for issuers.”¹²¹

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. . . [This] will cause the industry to contract . . . unless fees rise” Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹¹⁸ Letter from ICI to SEC (May 16, 2012). ICI considered funding the capital buffer from the market as a third possibility, and noted “significant legal, business, accounting, and economic hurdles to raising capital in the market.”

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Letter from SIFMA to SEC (Jan. 10, 2011). *See also* Letter from ICI to SEC (May 16, 2012); Letter from SunGard Global Network to SEC (Mar. 16, 2012); Letter from Federated Investors to SEC (May 6, 2011); Letter from Six Bipartisan Senators to SEC (Nov. 4, 2011) (Available: <http://www.preservemoneymarketfunds.org/senate-letter-to-sec-chairperson-mary-schapiro/>). This letter, addressed to Chairman Schapiro from six Senators, was not posted by the SEC in its public file on the PWG report on MMFs. This is surprising, in light of the importance of

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Capital Requirement Resulting in a Shrinkage of MMFs Would Have Broader Adverse Economic Impacts. Several commenters pointed out that a capital requirement that resulted in a shrinkage of MMF assets would contract the market for and raise the costs of, short-term public and private debt financing.¹²² As previously stated, MMFs are significant purchasers of commercial paper, short-term state and local government debt, and short-term Treasury and federal agency securities.¹²³ MMFs will purchase significantly less public and private debt once the funds' holdings are reduced. As a letter from 33 Members of Congress who are all former state and local officials warned, "Any reduction in demand for money market funds would reduce demand for the securities issued by state and local governments and purchased by MMFs. As a result, states and municipalities would be deprived of a critical funding source and would be faced with increasing debt issuance costs."¹²⁴

Capital Requirement Inappropriate for MMFs. Industry trade associations argued that a capital buffer would simply be inappropriate in the MMF context.¹²⁵ As SIFMA pointed out: "Unlike banks, money market funds do not use leverage or hold non-transparent assets, and they do not have operating assets, use off-balance sheet financing or have deposit insurance. It is for these reasons that banks have capital buffers that are structured to shield the Federal Deposit Insurance Corporation, depositors and other creditors. Investors in money market funds are shareholders, not creditors. They are subject to potential loss, in return for a market return on their short-term investments."¹²⁶ A former Federal Reserve lawyer further noted that "[c]apital may be appropriate as a loss-absorbing mechanism for banks, which are in the business of assuming credit risk on long-term loans and other assets. Unlike banks, MMFs operate subject to the strict limitations of Rule 2a-7 and are permitted to incur only minimal credit risk."¹²⁷

Impact of Capital Requirement on Prime Funds Only Would Destabilize the MMF Industry. BlackRock, although voicing cautious support of a capital requirement that would be flexible as to source and structure, cautioned that sponsors are limited in terms of how much yield they can hold back to build a capital buffer. According to BlackRock, "assuming a 6-basis point charge to the fund, prime funds' yields would have been lower than government funds'

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Congressional views on agency action on matters of public interest. The following senators signed the letter: Senator Patrick J. Toomey (R-PA), Michael F. Bennet (D-CO), Mike Crapo (R-ID), Jon Tester (D-MT), Mark Kirk (R-IL), and Robert Menendez (D-NJ).

¹²² Letter from 33 Members of Congress to SEC (May 1, 2012); Letter Greater Raleigh Chamber of Commerce to SEC (Feb. 28, 2012); Letter from the Northern Kentucky Chamber of Commerce to SEC (Jan. 20, 2012); Letter from John D. Hawke, Jr. to Financial Stability Oversight Council, filed with SEC (Dec. 15, 2011). *See also* Letter from Melanie Fein to SEC (May 11, 2012).

¹²³ PWG Report at 7.

¹²⁴ Letter from 33 Members of Congress to SEC (May 1, 2012). *See also* Letter from ICI to SEC (May 25, 2012); PWG Report at 34 ("If asset managers or other firms were unwilling or unable to raise the capital needed to operate the new SPBs, a sharp reduction in assets in stable NAV MMFs might diminish their capacity to supply short-term credit....").

¹²⁵ Letter from SIFMA to SEC (Jan. 10, 2011); Letter from ICI to SEC (Jan. 10, 2011).

¹²⁶ Letter from SIFMA to SEC (Jan. 10, 2011).

¹²⁷ Letter from Melanie Fein to SEC (Apr. 18, 2012).

more than 1/3 of the time. Looking forward, this relationship is sensitive and could result in substantial flows of capital among funds, thereby destabilizing the industry.”¹²⁸

Subordinated/Third Party Capital Would Be Unworkable. The proposal by the Squam Lake Group academics for the sale of subordinated equity in a MMF to third parties was criticized by other commenters soon after it was filed, primarily on the basis that it would transform MMF shareholders into creditors protected against loss by a small, more junior class of shareholder, essentially introducing leverage to MMFs for the first time.¹²⁹ Since then, several fund managers have expressed doubts about the feasibility of the proposal. Charles Schwab stated, “[w]e do not believe there is a viable market for a subordinated share class that would take first loss position in exchange for a higher return.”¹³⁰ In a detailed paper on the feasibility of various types of capital requirements, ICI stated that there are –

significant legal, business, accounting, and economic hurdles to raising capital in the market. . . . Adding subordinated debt or equity would turn a rather simple product—the money market fund—into a considerably more complex offering. Also, small funds and small fund complexes would likely find it difficult and costly to issue and roll over subordinated securities, resulting in industry consolidation and raising a barrier to entrants. Furthermore, the approach potentially would create competing interests between the subordinated and senior investors, such as the subordinated investors’ desire to avoid losses and senior investors’ desire for the fund to take greater risks to boost fund yields. A market-raised capital buffer would reduce the yield available to senior shareholders, and subordinated investors would have a highly levered investment.¹³¹

Other Issues Raised by Commenters. One fund company pointed out that a capital buffer would present fairness issues if the capital buffer is built up through retained yield, as current shareholders will be forced to pay to protect future shareholders.¹³² In a lengthy paper challenging the assumption by regulators that MMFs are “susceptible to runs,” a former Federal Reserve lawyer observed that a capital buffer would act as a tax on MMFs by forcing them to act as lenders of last resort to the bank commercial paper market, a role for which they are not suited

¹²⁸ Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹²⁹ See Letter from John D. Hawke, Jr. to SEC (Feb. 24, 2011); Letter from Federated Investors to SEC (May 6, 2011).

¹³⁰ Letter from Charles Schwab to IOSCO, filed with SEC (May 31, 2012). See also Letter from Fidelity Investments to IOSCO (May 30, 2012) (“It is highly speculative that any market will develop for such subordinated shares.”) (Available: <http://www.sec.gov/comments/4-619/4619-185.pdf>).

¹³¹ Letter from ICI to SEC (May 16, 2012).

¹³² Letter from Federated Investors to SEC (May 6, 2011).

and which could lead to their extinction.¹³³ Another commenter raised concerns about transparency and investor confusion with a capital buffer.¹³⁴

C. Comments on Holdback Proposal.

Two commenters expressed qualified support for a holdback requirement. In a letter critical of permanent redemption restrictions, asset manager BlackRock stated that a “stand-by redemption gate,” which would serve as an automatic liquidity restriction upon the occurrence of a predetermined event, such as a drop in a fund’s liquidity or shadow NAV, would be a less destructive alternative. While advocating this solution because “it appears that more change is imminent for the MMF industry,” BlackRock also stated, “it appears that, in aggregate, [the 2010 amendments] have been effective. MMFs have been functioning efficiently, with no systemic or idiosyncratic events recorded since the September 2008 breaking of the buck.”¹³⁵ HSBC proposed a “charge on redemptions that accurately reflects the cost of raising liquidity to meet redemptions”¹³⁶ Under HSBC’s approach, “[d]uring a period of market stress, or idiosyncratic stress of an individual fund, redemptions would be estimated to investors not at the Constant Net Asset Value (“CNAV”) price, but at the variable net asset value price (“VNAV”).”¹³⁷

Although Chairman Schapiro has stated that MMF reform could include some “limitations or fees on redemptions,”¹³⁸ the as-yet-unspecified holdback proposal could vary in size and form. For example, it could take the form of a reserve requirement (meaning, an investor would be required to leave a type of minimum balance in the MMF account). It could take the form of a fee paid at redemption or a holdback of a small percentage of shares on routine redemptions. It could also take the form of a contingent redemption fee or holdback, triggered only upon the occurrence of a precipitating event or market-wide crisis. Whatever the precise form or size, commenters have been nearly uniform in opposing any type of holdback requirement and have argued that such a requirement would present substantial accounting and operational obstacles for corporations and public treasurers and force these users to abandon money funds for investment products better suited to their cash management needs. Additionally, individual investors will lose the principal feature that makes the funds an attractive cash management vehicle – liquidity. Further, a number of commenters stated their

¹³³ Letter from Melanie Fein to SEC (Mar. 30, 2012).

¹³⁴ Letter from Keystone ELF to SEC (Nov. 18, 2011) (“How does [the floating NAV] address the transparency issues addressed by the required ‘shadow NAV?’ Will there now be three NAV’s to track? By artificially skewing the NAV in a more positive light, are we giving more comfort for investors?”).

¹³⁵ Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹³⁶ Letter from HSBC Global Asset Management to SEC (Feb. 28, 2011).

¹³⁷ *Id.*

¹³⁸ Chairman Mary L. Schapiro, Remarks at the Society of American Business Editors and Writers Annual Convention (Mar. 15, 2012).

view that a holdback requirement would have the perverse effect of precipitating runs, because investors would seek to redeem their funds early, in order to assure that they receive 100% of funds when they want or need them.

Impediments to Utility of MMFs for Efficient Cash Management. A number of commenters warned that a holdback requirement would eliminate MMFs as an efficient cash management tool for both retail¹³⁹ and institutional¹⁴⁰ users by destroying the funds' principal liquidity function. Commenters stated that, once MMFs no longer offer same-day liquidity, they will no longer be a viable investment option for a wide variety of institutional investors including corporations, securities lending operations, bank trust departments, sweep programs, securities brokers, investment managers, and state and local governments that rely on the funds for short-term cash management operations such as payroll.¹⁴¹

In a 2011 investment study of its clients, SunGard Global Network, which operates a MMF portal that enables treasury specialists at corporations and other MMF users to analyze and trade hundreds of MMFs, found that 88% of corporate treasurers and cash managers surveyed cited immediate access to cash as a major requirement of their cash investment policies.¹⁴² SunGard stated that a holdback requirement would prevent these investors from accessing their short-term liquidity on an as-needed basis to meet payments as they arise.¹⁴³

Operational Hurdles and Expenses. Commenters stated that a holdback would create substantial accounting hurdles and expense and drive up the cost of doing business for users of MMFs.¹⁴⁴ DST Systems, the largest provider of transfer agency and related recordkeeping services and systems to the U.S. mutual fund industry, stated “[e]nacting redemption restrictions as additional reform would require expensive changes to the industry and add incredible complexity for customers and providers alike. We believe reform of this nature would drive away a significant percentage of customers and assets from money market funds by taking away key product values to investors”¹⁴⁵

¹³⁹ Joint Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from DST Systems to SEC (Mar. 9, 2012); Letter from State Street to SEC (Feb. 24, 2012); Letter from ICI to SEC (Feb. 16, 2012); Letter from Bob Maddox to SEC (Feb. 7, 2012).

¹⁴⁰ Letter from Tennessee Municipal League to SEC (May 10, 2012); Joint Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letter from SunGard Global Network to SEC (Mar. 16, 2012); Letter from DST Systems to SEC (Mar. 9, 2012); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from State Street to SEC (Feb. 24, 2012); Letter from ICI to SEC (Feb. 16, 2012); Letter from U.S. Chamber of Commerce to SEC (Nov. 17, 2011).

¹⁴¹ Letter from ICI to SEC (Feb. 16, 2012).

¹⁴² Letter from SunGard Global Network to SEC (Mar. 16, 2012).

¹⁴³ *Id.*

¹⁴⁴ Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Feb. 24, 2012).

¹⁴⁵ Letter from DST Systems to SEC (Mar. 2, 2012).

In a lengthy and detailed study examining the processing and settlement of MMF shares, ICI described the step-by-step process by which MMF shareholders buy and sell shares using a range of services offered by intermediaries and fund sponsors.¹⁴⁶ The process can involve “a wide array of platforms, portals, and financial intermediaries such as broker-dealers and retirement plans.”¹⁴⁷ In its analysis, ICI found that at a minimum, modifying the infrastructure to process MMF transactions subject to a holdback provision would require changes to: (1) shareholder servicing interfaces for inquiry and transaction processing and for other servicing interfaces (such as portals, telephone voice response units, and the Internet) used by customers; (2) transfer agent and intermediary recordkeeping systems and ancillary systems that will compute, age, and track restricted share balances; (3) systems to identify and process redemption transactions that take into account restricted share balances in order to avoid transactions being rejected because they are “not in good order,” which could raise transaction costs significantly; (4) systems to track and process restricted share balances for pending redemption requests once the restricted shares have fully aged; (5) systems to provide restricted share balance data (including aging information) on both automated and manual account transfers for MMF assets moving between funds and intermediaries or between intermediaries; (6) reconciliation and control functions to include daily reporting of restricted share balances that will ultimately be used for cash and portfolio management, fund accounting, and financial reporting purposes; (7) NSCC systems (e.g., Fund/SERV and Networking) to incorporate the impacts of restricted share balance on transaction, acknowledgment, activity (including transfers), settlement, and reconciliation processing for both networked and omnibus accounts; (8) investor documentation and communications that explain redemption restrictions, as investors will likely find the calculation and application of restricted share balances difficult to understand; and (9) processes and procedures, as well as training, for shareholder servicing representatives, transaction processing personnel, reconciliation and treasury management, internal audit, legal, and compliance staff charged with implementing and servicing restricted share balance requirements on investor accounts.¹⁴⁸

Impact on the Use of Omnibus Accounts. Commenters also stated that a holdback would create a particularly difficult and costly recordkeeping problem for omnibus accounts, the accounting and payment systems for which are not presently equipped to handle and track an individual user’s holdback.¹⁴⁹ DST Systems framed the problem as follows: “Duties and responsibilities of parties would be exacerbated in an omnibus environment with either form of redemption restrictions. Transparency and reporting regarding which party applied the restrictions, amounts of funds held in reserve, amounts of transactions delayed still representing a future draw on funds, and reconciliation are all challenges that would be faced by systems and

¹⁴⁶ Letter from ICI to SEC (Jun. 20, 2012).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Letter from the American Benefits Council to SEC (Jun. 19, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from Federated Investors to SEC (Mar. 16, 2012); Letter from DST Systems to SEC (Mar. 2, 2012); Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

operations of funds and their service providers.”¹⁵⁰ Federated Investors calculated that depending on how the redemption restriction was implemented, in an omnibus account with 100,000 shares and 20 underlying accounts each holding 5,000 shares, 19 accountholders could redeem their entire balance without risk of loss, but the one remaining shareholder could not redeem any shares for the entire holdback period.¹⁵¹

The ICI’s study of the impact of redemption restrictions detailed how the widespread use of intermediaries in these processes will significantly impede the application of a holdback requirement at the fund level:

[M]any shareholders purchase, sell, and hold their money market fund shares through intermediaries that provide recordkeeping and other services to their clients and transact money market fund shares on their behalf, [including] . . . broker-dealers, portals, bank trust departments, insurance companies, and retirement plan administrators.

Intermediaries typically process customer transactions through omnibus or through intermediary controlled accounts through the NSCC. An omnibus account includes the shares of multiple investors—sometimes numbering in the thousands—that are customers of the intermediary. Omnibus accounts are held on the books of a fund in the name of the financial intermediary, acting on behalf of its customers. When an intermediary submits its transactions for an omnibus account, it usually consolidates the transactions of all customers that are purchasing or redeeming shares of the same fund that day into one or a few “summary” transactions for processing by the money market fund. In some cases, the intermediary or a shareholder serviced by an intermediary may transact directly with the money market fund through its fund transfer agent.

As a result of investors’ extensive use of financial intermediaries to effect mutual fund transactions, a mutual fund recordkeeper may have limited information on the underlying shareholders in omnibus accounts. Although the fund’s lack of information does not affect the shareholder’s ownership rights, it does impair the fund’s ability to comply with any redemption restriction requirement predicated on the fund knowing the identity and detailed transaction activity of each underlying shareholder. Without a direct relationship with these underlying shareholders—which is often lacking when investors own funds through an intermediary—the fund does not have access to the account-level information necessary to apply a continuous redemption restriction accurately.¹⁵²

Further, ICI explained that “[i]ntermediaries also are responsible for the applicable recordkeeping, communications, tax reporting, and other operational and servicing functions. To

¹⁵⁰ Letter from DST Systems to SEC (Mar. 2, 2012).

¹⁵¹ Letter from Federated Investors to SEC (Mar. 16, 2012). Federated Investors’ example assumes the redemption restriction would be implemented as a 5% minimum balance requirement.

¹⁵² Letter from ICI to SEC (Jun. 20, 2012).

implement these redemption restrictions, however, intermediaries would need to change thousands of systems that support each broker-dealer, bank, insurance company, trust, 401(k) recordkeeper, and any other institution that is tasked with processing money market fund transactions for its clients.”¹⁵³ ICI concluded, “the costs of these changes could be prohibitive and . . . the industry would be unlikely to undertake them, particularly if the SEC’s changes result in shrinking the asset base of money market funds.”¹⁵⁴

Impact on User’s Liquidity and Costs. Commenters warned that a holdback requirement could lock up significant amounts of MMF users’ funds in the event of frequent redemptions.¹⁵⁵ For example, Treasury Strategies reported that 70% of corporate MMF users surveyed transact in their funds several times per week, and 52% do so daily.¹⁵⁶ In simulating the potential effect of a holdback provision on these corporate users, Treasury Strategies pointed out that, assuming a daily 3% holdback, a user that transacts in its fund daily would end up with 60% of its cash investment locked up in the holdback over a four-week period.¹⁵⁷

Disruption of Payment Systems. Commenters, including an information technology systems provider servicing the MMF industry, stated that a holdback would disrupt finely tuned payment and settlement systems, decrease cash available to settle all types of transactions, eliminate the ability to conduct same-day or next-day processing of securities and thereby increase transaction fails, delay settlement cycles, and increase float and counterparty risk in system.¹⁵⁸ ICI stated, “The operational challenges and costs of such a concept . . . would be extensive, requiring changes to a myriad of systems that extend well beyond those under the control of the funds themselves. Indeed, fund complexes, service providers, and intermediaries have developed intricate and complex systems that allow them to communicate and process significant volumes of money market fund transactions on a daily basis through a variety of mechanisms on behalf of investors.”¹⁵⁹

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from Federated Investors to SEC (Mar. 16, 2012); Letter from DST Systems to SEC (Mar. 2, 2012).

¹⁵⁶ Letter from Treasury Strategies to SEC (Apr. 27, 2012).

¹⁵⁷ *Id.*

¹⁵⁸ Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Feb. 24, 2012); Letter from DST Systems to SEC (Mar. 2, 2012); Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹⁵⁹ Letter from ICI to SEC (Feb. 16, 2012). *See also* Letter from Fidelity Investments to IOSCO, filed with SEC (May 30, 2012).

These effects may be far-reaching, as numerous business applications involving automated accounting and settlement systems depend on same-day settlement that would not be possible with a holdback requirement.¹⁶⁰

DST Systems commented that “transaction volume is a fundamental cost driver in a mutual fund transfer agency. If a portion of each redemption were to be held back, the volume of all transactions necessary to process a redemption request would be doubled.”¹⁶¹

User Responses to a Holdback. Two commenters reported on the results of surveys they undertook to size the impact of a holdback on investor behavior and use of MMFs. In a survey of more than 200 corporate institutional MMF users by Treasury Strategies, 90% of institutional users said they would decrease or stop using a MMF if the instrument contained a holdback. Of those, 55% said they would stop using MMFs entirely.¹⁶²

In a survey of its retail MMF users, Fidelity Investments found that 52% of retail users would decrease their use of or altogether stop using their MMF if each redemption were subject to a 3% holdback. The results were nearly identical (51% would decrease or stop using altogether) if the 3% holdback were only in place during periods of market stress.¹⁶³

Conflicts with Statutory and Fiduciary Requirements. Other commenters stated that statutory or fiduciary law requirements would preclude numerous institutional investors from investing in instruments that did not return 100% of principal upon redemption.¹⁶⁴ In the Treasury Strategies survey, 32% of institutional users said that an investment policy, law, or other restriction would prevent them from investing short-term cash in an instrument with a holdback.¹⁶⁵

Federated Investors undertook an analysis of state corporate and trust laws and found that several states, including Delaware, may prevent funds from instituting a minimum balance requirement or a redemption holdback. As its letter warned,

¹⁶⁰ Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Feb. 24, 2012). *See* Section III.C (“*Range of Uses Affected*”).

¹⁶¹ Letter from DST Systems to SEC (Mar. 2, 2012).

¹⁶² Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies).

¹⁶³ Letter from Fidelity Investments to SEC (Feb. 3, 2012).

¹⁶⁴ Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies); Letter from Federated Investors to SEC (Mar. 16, 2012). *See also* Letter from the American Benefits Council to SEC (Jun. 19, 2012) (“The proposal under consideration, we understand, would require that ‘held back’ or restricted shares would be used to make the fund whole if a fund cannot maintain its \$1.00 NAV (commonly referred to as ‘breaking the buck’ or ‘breaking the dollar’). It simply is not clear that an ERISA fiduciary could allow the plan’s assets to be invested under these conditions consistent with regulation of plan assets under ERISA.”).

¹⁶⁵ Letter from ICI to SEC (Apr. 19, 2012) (providing a survey of corporate institutional investors conducted by Treasury Strategies).

Such state laws govern, *inter alia*, shareholder rights, preferences, dividends, and distributions, and will, as a matter of corporate law, determine the extent to which a money market fund may charge losses or expenses against amounts held back from redemptions. Such laws may even limit the fund's ability to hold back anything in the first instance. As the Commission does not have any authority to modify state laws or fund organizational documents, it cannot resolve these issues through regulations. Although some of the limitations might be addressed with shareholder consent, there is no reason to suppose that shareholders will be any more willing to consent to these changes than they would be willing to continue to use the funds after the redemption requirements were imposed.¹⁶⁶

Range of Uses Affected. John Hawke, on behalf of Federated Investors, provided an analysis of Federated's own data and data commercially available from other sources and submitted to the SEC, estimating that 50% or more of aggregate MMF holdings may be specialized uses of the funds for which same-day or next-day processing of the full balances redeemed or invested is essential. These uses include: corporate payroll processing, storing corporate and institutional operating cash balances, bank trust accounting systems, storing federal, state and local government cash balances, municipal bond trustee cash management, consumer receivable securitization cash processing, escrow processing, 401(k) and 403(b) employee benefit plan processing, holding broker-dealer and futures commission merchant customer cash balances, and holding cash sweep balances in cash management type accounts at banks and broker-dealers. Mr. Hawke observed that a holdback would make same-day and next-day processing impossible.¹⁶⁷

Impact on the Cost of Public and Corporate Funding. Several commenters stated that a holdback requirement that resulted in a shrinkage of MMF assets would contract the market for and raise the costs of, short-term public and private debt financing.¹⁶⁸ As previously stated, MMFs are significant purchasers of commercial paper, short-term state and local government debt, and short-term Treasury and federal agency securities.¹⁶⁹ A letter from the Tennessee Municipal League stated, "Money market funds hold more than half of the short-term debt that finances state and municipal governments for public projects such as roads, bridges, water and sewage treatment facilities and hospitals. Without that financing, local governments may be forced to limit projects and staffings, spend more on financing by investing in lower yield products, or increase taxes."¹⁷⁰

¹⁶⁶ Letter from Federated Investors to SEC (Mar. 16, 2012).

¹⁶⁷ Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Mar. 19, 2012).

¹⁶⁸ See Letter from Tennessee Municipal League to SEC (May 10, 2012); Letter from 33 Members of Congress to SEC (May 1, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from Alleghany Conference on Community Development and Greater Pittsburg Chamber of Commerce to SEC (Apr. 24, 2012); Letter from Indiana Chamber to SEC (Mar. 20, 2012); Letter from Texas Association of Business to SEC (Feb. 27, 2012).

¹⁶⁹ PWG Report at 7.

¹⁷⁰ Letter from Tennessee Municipal League to SEC (May 10, 2012).

Investor Confusion. Commenters also warned that a holdback would create significant confusion among individual and corporate money fund investors, who would face challenges in simply knowing the amount of their available cash balances – that is, balances not subject to a holdback – as varying amounts intermittently become subject to and are released from the holdback.¹⁷¹

Impact in Shifting Investor Assets to Less Regulated Vehicles. A number of commenters pointed out that the holdback requirement would motivate investors to shift assets to riskier or unregulated cash-management vehicles once MMFs no longer meet the liquidity requirements of institutional and retail investors using MMFs for their short-term cash management needs.¹⁷² A joint letter from the Independent Directors Council and the Mutual Fund Directors Forum stated, “fundamental changes to money market funds currently being considered by the SEC,” including restricting investor redemptions, “would render these funds substantially less attractive to investors and will likely result in investors moving their cash to less-regulated and/or less-transparent products.”¹⁷³ The ICI added: “We anticipate that intermediaries, which would be subject to lengthy and expensive programming and significant other costs to effectuate these changes, would utilize unregulated or less regulated money market investment vehicles for their clients’ cash management needs—especially if those needs are no longer met by the money market fund product—because of the lack of utility these new money market funds would have for investors.”¹⁷⁴

Impact of Flow of MMF Assets into Banking System. According to commenters, a holdback requirement would push investors to banks. They noted that banks do not have the infrastructure, capital, or incentive to provide short-term funding at the levels MMFs currently do.¹⁷⁵

Investor Fairness. Treasury Strategies commented that a holdback requirement would punish institutional investors who use MMFs as a regular cash management tool and would also negatively impact retail investors who, in many cases, may accumulate cash in a MMF where the entire amount is required at a single point in time.¹⁷⁶

Potential to Accelerate Runs. According to some commenters, a holdback would accelerate, rather than prevent, runs as investors will now redeem at the first sign of market

¹⁷¹ Letter from DST Systems to SEC (Mar. 2, 2012); Letter from John D. Hawke, Jr. on behalf of Federated Investors to SEC (Feb. 24, 2012).

¹⁷² Joint Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from 33 Members of Congress to SEC (May 1, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from Mutual Fund Directors Forum to SEC (Mar. 29, 2012); Letter from Texas Association of Business to SEC (Feb. 27, 2012); Letter from ICI to SEC (Feb. 16, 2012); Letter from State Street to SEC (Feb. 24, 2012).

¹⁷³ Joint Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012).

¹⁷⁴ Letter from ICI to SEC (Feb. 16, 2012).

¹⁷⁵ Joint Letter from Independent Directors Council and Mutual Fund Directors Forum to SEC (May 2, 2012); Letter from Treasury Strategies to SEC (Apr. 27, 2012).

¹⁷⁶ Letter from Treasury Strategies to SEC (Apr. 27, 2012).

unease, even from ultimately healthy funds.¹⁷⁷ After conducting a survey of its customers, BlackRock pointed out, “[M]any of them told us that with a portion of their balance held back for 30 days *and* subordinated [to satisfy the first losses in the fund], they would choose to redeem much sooner – at the slightest sign of nervousness in the markets.”¹⁷⁸ Treasury Strategies further commented,

[I]nvestors may view any sign of market distress, even if totally unrelated to MMFs, as a signal to exit and beat the thirty-day clock. Investors learned in 2008 that market seizing in one asset class can spread to other asset classes. The thirty-day holdback would prompt them to exit at the first sign of distress in any asset class. In this case, the holdback provision ensures that if any unrelated asset class seizes, the distress WILL spread to MMFs. That’s creating contagion.”¹⁷⁹

¹⁷⁷ Letter from Treasury Strategies to SEC (Apr. 27, 2012); Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹⁷⁸ Letter from BlackRock to SEC (Mar. 2, 2012), referencing Blackrock, *Money Market Funds: The Debate Continues* (March 2012) (Available: https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&source=CONTENT&ServiceName=PublicServiceView&ContentID=1111160117).

¹⁷⁹ Letter from Treasury Strategies to SEC (Apr. 27, 2012) (emphasis in original).

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Listing of All Commenters

As of July 13, the Commission has received comments from the following, listed in the order posted on the Commission's website (with multiple comments shown after the latest listing):

- Federated Investors, Inc. (letters from Federated and John D. Hawke, Jr. dated July 12, June 20, June 19, June 1, May 4, March 26, March 19, March 16, and February 24, 2012 and December 15, May 19, May 6, March 25, March 15, February 24, January 10, and January 7, 2011);
- Melanie L. Fein, Fein Law Offices (letters dated July 11, June 28, June 26 May 17, May 11, Apr. 18, and March 30, 2012);
- Jeffrey Gordon, Professor, Columbia School of Law (letters dated July 3, 2012 and August 12, 2011);
- Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (letters dated June 27, 2012 and November 17, 2011);
- Utah Association of Counties;
- New York State Association of Counties;
- Investment Company Institute (letters dated June 20, May 25, May 16, April 19, April 13, Feb. 16, 2012 and January 10, 2011);
- American Benefits Council (whose members sponsor directly or provide services to retirement, health and compensation plans covering more than 100 million Americans);
- Vanguard Group (letters dated June 4, 2012 and January 10, 2011);
- J. and J.M.;
- Treasury Strategies, Inc. (letters dated June 1, April 27, March 19, and March 13, 2012; January 10, 2011 and December 17, 2010);
- Charles Schwab Investment Management (letters dated May 31 and April 6, 2012);
- Fidelity Management & Research Company (letters dated May 30, April 26, March 1, February 3, 2012 and January 10, 2011);
- Invesco Advisers (letters dated May 25, 2012 and January 10, 2011);
- The Utah League of Cities and Towns (representing the 245 incorporated municipalities in the State of Utah) (letters dated May 10, 2012 and Jan. 10, 2011);
- Tennessee Municipal League;
- David Matthews;
- Independent Directors Council & Mutual Fund Directors Forum joint letter;
- Indiana County Treasurers Association;

- Allegheny Conference on Community Development and Greater Pittsburgh Chamber of Commerce;
- North Carolina Independent Colleges and Universities;
- Capital Advisors Group;
- Mutual Fund Directors Forum (letters dated March 29, 2012 and January 10, 2011);
- Metropolitan Mayors Caucus (representing 272 mayors in the Chicago metropolitan region);
- William C. Hein;
- Donald Brundrett;
- Emmanuel and Maria Frangos;
- Indiana Chamber of Commerce;
- Watson Wilkins & Brown, LLC;
- SunGard Global Network (a broker-dealer aiding its corporate treasury customers in managing over \$100 billion in MMF assets);
- DST Systems, Inc. (the largest third party shareholder recordkeeping system servicing the U.S. mutual fund industry) (letters dated March 9 and March 2, 2012);
- Coalition of Mutual Fund Investors (letters dated March 8, 2012 and January 21, 2011);
- BlackRock, Inc. (letters dated March 2, 2012 and January 10, 2011);
- Greater Raleigh Chamber of Commerce (representing over 2,400 member companies) (letters dated February 28, 2012 and January 31, 2011);
- Texas Association of Business;
- State Street Corporation;
- David J. Merkel, CFA, MA;
- Henry M. Paulson, Jr.;
- Bob Maddox;
- Northern Kentucky Chamber of Commerce (representing more than 2,000 member businesses);
- New Hampshire College & University Council;
- Cachematrix Holdings (letters dated December 12, 2011 and April 29, 2011);
- Jill Fisch, University of Pennsylvania Law School and Eric Roiter, Boston University School of Law;
- Keystone ELF Inc. (letters dated November 18, 2011 and April 14, 2011);
- Washington State Treasurer;

- New Jersey Association of Counties;
- The Financial Services Roundtable (letters dated June 30 and February 11);
- Colorado County Treasurers Association (representing sixty-four county treasurers);
- Daniel M. Perkins, RIA;
- Fidelity Management and Research Company, Charles Schwab Corporation and Wells Fargo Funds Management, LLC (joint letter);
- Chartered Financial Analysts Institute;
- William F. Spivey, Jr.;
- Financial Consulate, Inc.;
- HSBC Global Asset Management;
- Shadow Financial Regulatory Committee (association of economists);
- Paul Volcker;
- Greater Albuquerque Chamber of Commerce;
- New Jersey Business & Industry Association (representing 22,000 member businesses);
- Chief Financial Officer of the State of Florida, Florida Department of Financial Services;
- Greater Providence Chamber of Commerce (representing over 2,000 companies);
- Association of Commerce and Industry, New Mexico (New Mexico's statewide chamber of commerce);
- Jacksonville Regional Chamber of Commerce (representing over 3,000 large and small businesses);
- Greater Durham Chamber of Commerce (representing over 1,000 business, nonprofit and government agencies);
- Florida Chamber of Commerce (representing over 139,000 large and small businesses, employing over 3 million Floridians);
- Greater Boston Chamber of Commerce;
- New Mexico Association of Counties (representing New Mexico's thirty-three counties);
- Rhode Island Economic Development Corporation (official economic development organization for the State of Rhode Island);
- North Carolina Chamber of Commerce (representing tens of thousands employers and over 800,000 employees);
- Texas Municipal League (representing more than 1,100 cities, with populations ranging from fewer than 100 to more than 2,000,000);
- American Association of State Colleges and Universities (representing 420 public colleges and universities);

- Utah State Treasurer;
- Ethics Metrics, LLC;
- New Jersey Chamber of Commerce (representing 1,500 member companies);
- Northern Rhode Island Chamber of Commerce (representing more than 650 member businesses and approximately 12,000 employees);
- The Squam Lake Group (group economists);
- The Business Council of New York State (representing over 3,000 members);
- Ralph Becker, Mayor, Salt Lake City Corporation;
- Cincinnati USA Regional Chamber;
- The Federal Reserve Bank of Richmond;
- The Financial Services Institute (representing 123 independent broker-dealer member firms and more than 14,500 independent financial advisors);
- New Hampshire State Treasurer;
- Goldman Sachs Asset Management;
- UBS Global Asset Management;
- The Investment Company Institute;
- USAA Investment Management Company;
- The Dreyfus Corporation;
- Dallas Regional Chamber;
- JP Morgan Asset Management;
- Kentucky Chamber of Commerce (on behalf of more than 2,700 members representing over half of the state's private workforce);
- Crane Data;
- Wells Fargo Funds Management;
- Association Française de la Gestion Financière;
- The Center for Securities, Trust and Investments of the American Bankers Association;
- American Bankers Association;
- Deutsche Investment Management Americas Inc.;
- Independent Directors Council;
- Kentucky State Treasurer;
- T. Rowe Price;
- Silicon Valley Bank Asset Management;

- Thrivent Mutual Funds;
- Associated Industries of Florida (representing more than 10,000 members);
- Securities Industry and Financial Markets Association;
- Institutional Money Market Funds Association;
- FSC Securities Corporation;
- Institutional Cash Distributors;
- Association for Financial Professionals (AFP) (representing over 16,000 financial professionals employed by over 5,000 corporations and other organizations);
- European Fund and Asset Management Association (the representative association for the European investment management industry with 26 member associations and 45 corporate members);
- Jonathan Macey, Professor, Yale Law School;
- Cincinnati/Northern Kentucky International Airport;
- SagePoint Financial, Inc.;
- Royal Alliance Associates;
- Port of Houston Authority;
- John M. Winters;
- Joseph M. Tully;
- Tom Welch;
- National Association of State Treasurers (representing the treasurers or chief financial officers of the fifty states, the District of Columbia, and Puerto Rico);
- Ted Lapis; and
- The Derivative Project.

The SEC received a joint letter from the following 119 associations, businesses, and government entities:

- Access Technology Systems;
- Alert Stamping & Mfg. Co., Inc.;
- Alro Enterprises, LLC;
- Altus;
- Alydar Agency Inc.;
- Association for Financial Professionals;
- Association of Washington Business;

- BARD Materials;
- BD Construction, Inc./Kearney;
- Bear City Glass Co.;
- Beaudoin Electrical Construction;
- Bellevue Drug Company, Inc.;
- Black-Haak Heating;
- Brandywine Communications;
- Brooks Bridge Bar-B-Que and Cafe Inc.;
- Burns Petroleum LLC;
- Business Services Etc, Inc.;
- Cadence Design Systems, Inc.;
- Captel;
- Castle Hunter Construction LLC;
- Center Sports, Inc.;
- Classic Bars Inc.;
- Conveyors Inc.;
- Crafts, Etc.;
- Crane Data;
- Crestview Taxi LLC;
- Cross Diamond Electric;
- Cruise Control Auto Care;
- D.O. Inc.;
- Dennis Neuhaus Inc.;
- Devon Energy;
- Diamond Rigging Corporation;
- Diversified Insurance Management;
- Downey-Goodlein Elevator Corporation;
- East Tennessee Section ofAACE International;
- Easter Seals Northwest Alabama;
- Elite Insurance Agency, Inc.;
- Eye Kraft Optical, Inc.;

- Fairbanks Construction;
- Fairweather Medical Group;
- Financial Executives International Committee on Corporate Treasury;
- Financial Services Institute;
- FMC, Corp.;
- Four Sons Quality Cleaners;
- G&R Sales & Service;
- George's Rental & Supply Inc.;
- Georgetown Auto Parts;
- Global Tooling Solutions LLC;
- Greater Pittsburgh Chamber of Commerce;
- Greater Springfield Chamber of Commerce;
- Greg A. Parker, PE Consulting Engineer, Inc.;
- Gyminny Kids, Inc.;
- Hanweck Associates, LLC;
- Hastings Area Chamber of Commerce;
- Heart of the Valley Chamber of Commerce;
- Heating, Air-Conditioning and Refrigeration Distributors International (HARD I);
- Henderson Area Chamber of Commerce;
- Hermiston Chamber of Commerce;
- Imperial Door Controls, Inc.;
- Joe West Company;
- Johnson City/Jonesborough/Washington County (IN) Chamber;
- Kauai Nursery & Landscaping Inc.;
- Kentucky Chamber of Commerce;
- Kerns Trucking, Inc.;
- Kimmel Mechanical, Inc.;
- Machine Repair & Design Inc.;
- Magna Steel Sales Inc.;
- Merck;
- Midland Area Chamber of Commerce;

- Mike's Body Shop;
- Mohawk Valley Chamber of Commerce;
- Monticello Strategies;
- National Association of College and University Business Officers;
- National Association of Corporate Treasurers;
- National Shooting Sports Foundation;
- Nevada Blue LTD;
- Noel Sebastian Consulting;
- North Carolina Chamber;
- Outdoor Amusement Business Association, Inc.;
- Oxford Financial Services LLC;
- P &H Farms;
- P .L. Gaetano Transportation Inc.;
- Peninsular Mechanical Contractors, Inc.;
- Pennsylvania Chamber of Business and Industry;
- Pharmacy Solutions;
- PHIoFGA;
- Plastics and Concepts of Connect, Inc.;
- Protective Security, Inc.;
- Quality Marble, Inc.;
- Red River Precision Manufacturing Inc.;
- Regal Marketing Inc.;
- Reiman Corp.;
- Retail Industry Leaders Association (RILA);
- Retirement Strategies Group, LLC;
- Rowan County Chamber of Commerce;
- Safeway Inc.;
- SASIND Aviation, Inc.;
- Scott Metals, Inc.;
- Selma Communications, SVC;
- Smith-Doyle Contractors, Inc.;

- Smithville Communications, Inc.;
- Southern Tank & Mfg Co Inc.;
- Spin Techs Inc.;
- Stallion Machine Shop LLC;
- Stewart Alexander & Company, Inc.;
- Stowers Machinery Corporation;
- Texas Association of Business;
- The Boeing Company;
- The Witte Co, Inc.;
- Timberville Drug Store Inc.;
- Tioga Construction Co, Inc.;
- Towne East Investments Properties;
- Treasury Strategies, Inc.;
- Tri-State Financial Services;
- U.S. Chamber of Commerce;
- Visteon Corporation;
- Water Resource Engineering Associates;
- Weslyn Mfg., Inc.; and
- Wilhoite & Associates.

Thirty-three Members of Congress who are former state and local government officials wrote to the SEC. They are:

- Congressman Richard E. Neal (D-MA);
- Congressman Tom Reed (R-NY);
- Congressman James P. Moran (D-VA);
- Congressman Frank C. Guinta (R-NH);
- Congressman Gerald E. Connolly (D-VA);
- Congressman David Schweikert (R-AZ);
- Congressman Michael E. Capuano (D-MA);
- Congressman Steve Chabot (R-OH);
- Congressman Gary Peters (D-MI);
- Congressman Aaron Schock (R-IL);

- Congressman Jim Himes (D-CT);
- Congressman Phil Roe, MD (R-TN);
- Congressman David Cicilline (D-RI);
- Congressman Mike Coffman (R-CO);
- Congressman Henry Cuellar (D-TX);
- Congresswoman Lynn Jenkins (R-KS);
- Congressman John Carney (D-DE);
- Congresswoman Cynthia Lummis (R-WY);
- Congressman Brian Higgins (D-NY);
- Congressman James B. Renacci (R-OH);
- Congressman Martin Heinrich (D-NM);
- Congressman Adam Kinzinger (R-IL);
- Congressman Albio Sires (D-NJ);
- Congressman Kenny Marchant (R-TX);
- Congressman Bill Pascrell (D-NJ);
- Congressman Steve Stivers (R-OH);
- Congressman John Larson (D-CT);
- Congressman Bill Posey (R-FL);
- Congressman Sam Farr (D-CA);
- Congressman Jeff Fortenberry (R-NE);
- Congressman Todd Rokita (R-IN);
- Congressman Mike Fitzpatrick (D-PA); and
- Congressman Mike Kelly (R-PA).

Six Senators wrote to the SEC. They are:

- Senator Patrick J. Toomey (R-PA);
- Michael F. Bennet (D-CO);
- Mike Crapo (R-ID);
- Jon Tester (D-MT);
- Mark Kirk (R-IL), and
- Robert Menendez (D-NJ).

The SEC received a collective letter from the following issuers and associations (the “22 Issuers and Associations” letter):

- Agilent Technologies, Inc.;
- Air Products & Chemicals, Inc.;
- Association for Financial Professionals;
- The Boeing Company;
- Cadence Design Systems;
- CVS Caremark Corporation;
- Devon Energy;
- Dominion Resources, Inc.;
- Eastman Chemical Company;
- Eli Lilly & Company;
- Financial Executives International: Committee on Corporate Treasury (association of senior-level financial executives);
- FMC Corporation;
- Institutional Cash Distributors;
- Kentucky Chamber of Commerce;
- Kraft Foods Global, Inc.;
- National Association of Corporate Treasurers;
- New Hampshire Business and Industry Association (statewide chamber of commerce representing more than 400 members);
- Nissan North America;
- Pacific Gas and Electric Company;
- Safeway Inc.;
- Weatherford International; and
- U.S. Chamber of Commerce.

Also co-signing a group letter filed by the Association for Financial Professionals were the following 13 associations and entities:

- Association for Financial Professionals;
- Benefit Resource, Inc.;
- Blue Cross Blue Shield of Massachusetts;

- CacheMatrix;
- Catholic Health Initiatives;
- California ISO;
- CareSource;
- Centerline Capital Group;
- Crawford & Company;
- Grass Valley USA LLC;
- Miami-Dade County Public Schools;
- Solix, Inc.;
- University of Colorado – Treasurer’s Office; and
- WellCare Health Plans, Inc.

Also filing two group letters (March 8, 2012 and January 10, 2011) were the following associations of state and local entities (“12 State and Local Entities” letter):

- American Public Power Association (service organization for more than 2,000 community-owned electric utilities);
- Government Finance Officers Association;
- International City/County Managers Association;
- International Municipal Lawyers Association;
- National Association of Counties;
- National Association of Local Housing Financing Agencies;
- National Association of State Auditors, Comptrollers and Treasurers;
- National Association of State Treasurers;
- National League of Cities;
- U.S. Conference of Mayors;
- Council of Development Finance Agencies (representing 300 public, private and non-profit development entities, including state, county and municipal development finance agencies and authorities); and
- Council of Infrastructure Financing Authorities (an organization of 37 state, regional, and local entities involved in the financing of water pollution control projects).