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Submitted electronically

Ms. Vanessa A. Countryman
Secretary
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

**Re: Request for Comment on Potential Money Market Fund Reform Measures in President's Working Group Report
Release No. IC-34188; File No. S7-01-21**

Dear Ms. Countryman:

I appreciate the opportunity to submit this letter in response to a request for comment by the United States Securities and Exchange Commission (the "Commission") on potential money market fund reform measures. This comment reflects decades of experience through legal representation of money market funds in multiple complexes before, during and after the fiscal crises around 2008, including knowledge, gained at the boardroom table, of actual shareholder behavior at those complexes and exposure to portfolio composition practices and compliance activities.

Money market funds are open-end management investment companies under the Investment Company Act of 1940 (the "1940 Act") regulated under Rule 2a-7 adopted in 1983 under the 1940 Act. Rule 2a-7 permitted money market funds to maintain a special valuation regime because they invested only in a diversified portfolio of highly liquid short-term investments, e.g., commercial paper (for purposes of this letter, all such investments abbreviated as "CP"). The valuation methods allowed by the rule enabled investors to enjoy a tax-efficient investment and redemption process because the funds, absent a default on an investment, maintained a stable net asset value, normally one dollar per share. Defaults were rare because instruments were of short enough tenor that funds could usually exit before problems that threatened issuers could mature into defaults.

Money market funds quickly became popular with the public, with subsets including prime, institutional, municipal and U.S. government only funds. Broker-dealers and custodians widely adopted money market funds as settlement utilities for their platforms, enabling daily sweeps into and out of the settlement funds as a core account feature. Over time, the Commission skillfully adjusted the requirements under Rule 2a-7 to enhance investment diversification, narrow the set of permissible investments to promote safety and assure careful oversight.

Nevertheless, occasional sudden defaults of CP issuers could and did occur. Unfortunately, in my opinion, instead of forcing money market fund investors to bear the risks that they had undertaken in the face of clear and adequate disclosure, the Commission and its staff permitted fund sponsors to prop up share values in these circumstances so that the funds would not "break the buck" and reflect losses. Instead of being reminded that money market investments, like all investments, bear the risk of loss, certain fund sponsors and the press popularized the notion that no harm could or should befall investors in such funds.

In 2008, some of the issuers of CP in which money market funds had invested, such as banks, broker-dealers, and mortgage, consumer finance and insurance companies, were financially threatened, particularly those that had engaged in sub-prime lending or issuance of credit default obligations, or bore counterparty risk from those entities. Reserve Primary Fund - sold entirely to institutions seeking a return on their overnight funds - was found to have maintained an investment in the collapsing Lehman Brothers, and its investors came to lose about 2% of their investment (protected by the Commission's Rule 2a-7 regime, this was a much lower percentage loss than suffered by investors in some banking institutions).

As is often the case, the victims, namely, money market funds, were blamed, as opposed to the subset of their institutional investors who had exposed themselves, and the financial system, as a whole, to risk, by over-reliance on short-term financing and who instantly sought even more liquidity than provided by redeemable fund shares. The U.S. Treasury itself charged in with the counterintuitive aim of restraining money fund shareholders - whose principal investment objective was safety of capital - from deserting a sector that was in severe financial jeopardy, *i.e*., short-term unsecured investments in the beleaguered financial industry.

Since 2008, bank regulators have sought a kludge that would somehow preserve the continued rolling over of short-term financing for imperiled institutions in the face of heightened economic uncertainty, for example, to impose gates on redemptions. Harnessing money market fund investors' capital to backstop the CP market is contrary to those investors' expectations, and forcing them to pay for the privilege (through capital reserves or otherwise) is unfair and unwise.

Systemic risk arises from the fact that certain CP issuers that are systemically significant unwisely choose to rely on short-term financing in order to incur lower interest rates than otherwise. Since these issuers knowingly take the risk that financing may dry up – most likely when least available – they, not money fund investors in general, should bear the consequences when it turns out that the decision was imprudent.

Some have argued that money-market funds are "shadow banks"; but the claim is disingenuous. Money market funds do not engage in the **conversion of short-term obligations into illiquid long-term obligations**, which is the central function of banking that impels regulatory scrutiny and protection. Bank regulators attempt to restrict banks within safe capital and investment limits to help mitigate circumstances in which depositors seek to recover assets that are out on loan.

In contrast, money market funds own only short-term securities, overwhelmingly those that are coming due within the period that the funds have under the 1940 Act to repay their investors. Amendments to Rule 2a-7 since its original adoption narrowed the duration of portfolio holdings to periods deemed appropriate to satisfy shareholder redemptions – and could be limited further.

If there is a run on a bank, the bank cannot satisfy demands on it because its loans cannot be converted to cash – which is why depositors of funds not protected by deposit insurance want to be early to withdraw the limited amount of cash. If there are heavy redemptions on a money market fund, however, they can be fully satisfied – except to the extent that a loss has already been realized through a default on an instance of CP. The *anticipated* risk of default should already have been priced into the net asset value of the fund and the *actualized* loss through default should be borne by those investors at the time of the default. If money market funds are subject to a "run," it can only be because certain investors believe that the actual risk (before a default or series of them) is greater than that already reflected in the market prices of the funds' holdings. That is the way that securities markets work. (This is no different from redemptions by shareholders of stock funds who fear that the stock market will fall.)

The risk that concerns bank regulators, however, is not the protection of money market fund investors or the "stability" of a fund that is fully capable of meeting its redemption obligations. It is the effect on the financial markets of the withdrawal of short-term funding - through money market fund redemptions - by investors who primarily seek safety. In the heat of the crisis in 2008, the Treasury hoped that by assuring investors that they would not lose money, those investors would not withdraw their funding of businesses feared to be in precarious circumstances without continued access to liquidity. In fact, most investors in most retail funds did not redeem their money market fund investments – not because the Treasury guaranteed them, but because they did not need liquidity and they felt that their money was safely invested. Institutions were more likely to seek redemptions, because they feared that their own short-term funding would dry up or they would be called on to satisfy outstanding obligations with minimal notice. They needed all the liquidity they could muster and access to cash immediately, rather than within seven days as in a money market fund.[1]

The mission of the SEC is stated to be "to protect investors; maintain fair, orderly, and efficient [securities] markets; and facilitate capital formation" in those markets. The President's Working Group on Financial Markets ("PWG") report issued on December 22, 2020 (the "Report") seeks policy measures to avoid "stresses in short-term funding markets" (which are not securities markets) as a result of redemptions in money market funds such as those that occurred in March 2020 when the COVID-19 pandemic affected business operations.

Money market funds exist as open-end investment companies precisely so that fund investors are able, for self-protection, to enhance their own safety and liquidity by relying on their right of daily redemption and other protective features of the 1940 Act and Rule 2a-7. This necessarily includes the ability to withdraw short-term funding of businesses perceived to be subject to newly perceived risks. The Commission's role is to assure that investors are able to make investment decisions with a reasonable understanding of material risks. The Commission's role is not to protect money market fund shareholders against surprise risks (like COVID-19) or to use their capital against their will to protect others (like banks or CP issuers) against external risks.

What the PWG should be asking is how to protect CP issuers from the consequences of their own sometimes erroneous presumption that short-term funding markets would continue to be

[1] The Commission also had to consider the potential that investors who remained in the funds in these circumstances might be left with claims on assets more likely to default, *i.e.*, whether investors that redeemed would gain advantages over those who did not. However, unlike longer duration bond funds, money market funds already schedule a pre-planned run-off of their investments, all of which have been highly rated, rather than engaging in the sale of safe investments and retention of impaired ones.

available. The obvious market response in troubled times will be the increase in short-term interest rates to levels at which investors would willingly take the investment risk. To the extent that money market fund investors value safety above return, however, other investors may be quicker and more likely than money market fund investors to find these increased market returns attractive.

If the PWG believes that certain CP issuers should rely less on short-term funding, the regulators of those issuers, including the SEC, should prohibit that undue reliance. If the PWG believes that certain types of troubled CP issuers should have a source of funding to replace money market fund withdrawals, the Treasury should either establish a facility to lend directly to those issuers or should provide banks under regulatory supervision the ability and conditions to do so. (A bank that increases its short-term lending in those circumstances correspondingly reduces the duration of its full book of loans and makes its own financial condition marginally safer.)

As for enhanced regulation of money market funds, I find that post-2008 adjustments were unhelpful. In this, I agree with Prof. Jeffrey Gordon that “neither floating NAV nor gates and fees … provide stability to MMFs at a time of financial stress, indeed, could exacerbate run pressure.” The abandonment of amortized cost for non-government funds achieved no result but to withdraw a redeemable short-term form of capital, *i.e*., from prime and core money market funds, from non-governmental CP issuers. As a result, there was broad movement by investors to the government and municipal money market funds that were able to continue using amortized cost to stabilize net asset value. In turn, municipal issuers that chose to rely on plentiful short-term financing became subject to the risk that such sources of funds might become unavailable when needed.

Likewise, subjecting institutional money fund investments to a variable share price accomplished nothing but complicating the investors’ bookkeeping and tax computations. It marginally increased the chance of taking small losses (or gains) - but not enough to counteract the fear of becoming subject to large losses from maintaining investments at inopportune times. The result was the otherwise unnecessary demise of many institutional funds.

Under Rule 2a-7, the chance that money market funds will bear losses is low, The test period since the rule’s adoption has now been over thirty years. The actual losses are measurable and, if they had been borne by the shareholders instead of sponsors, were small enough that reasonable investors would accept them without an unsupportable stampede for the exits. Money market fund holdings that had to be disposed of due to a ratings downgrade have been cleared from the books without difficulty in the overwhelming number of instances. In my view, therefore, the most desirable enhancement to money market fund regulation would be a prohibition on sponsors’ support of money fund prices under any circumstances (other than reducing management fees to the extent approved by the directors). Money fund investors should be exposed to default risk and borrowers to the reinforced risk that liquid capital become unavailable.[2] A fund’s breaking “the buck” does not represent the “failure” of the fund as an

[2] Banks would – and should – benefit from the opportunity to offer facilities assuring emergency credit, for an appropriate ongoing financing rate. This is not a product that money market funds can offer. Authority to offer such credit would enable banks to obtain the benefit of the excess interest rates that CP issuers should incur for risking reliance on short-term obligations and could be supported by the Treasury if that were deemed desirable. Thus, CP issuers would pay for their own risky behavior and banks would obtain compensation, all without impairing the ability of money market fund investors to put out – and withdraw – capital in the CP markets.

institution, like the failure of a bank. It represents a limited economic loss from an unfortunate investment in a diversified portfolio of other more successful investments. Diversification is the quintessential risk management tool of portfolio management, and the basis for the success of mutual funds (and ETFs[3]) as safe – not risk-free - investments.

I believe that a stable net asset value is beneficial and should be revived, except to the extent that losses occur, in which case, money market funds should be required immediately to revert to a chosen stable price (historically $1 per share) through a reverse stock split. That way, only the shareholders at the time of the decline in value would suffer accounting complications. Shareholders who incurred the loss should be notified, and told how many days' income the loss represented and whether the loss arose from an actual default, a decline in value of a particular holding as a result of a downgrade or expected default, or from a decline in net asset value greater than one-half cent as a result of general market conditions. Then, investors should be left to decide for themselves whether, having suffered a loss already, they are best off redeeming or maintaining their investments. I believe that large-scale withdrawal will only occur when the investors face their own liquidity needs, and will not constitute a "run" because the fund that is properly complying with Rule 2a-7 will be able to satisfy redemptions in the ordinary course. Investors may also redeem if they believe that a loss reflects a flawed investment process by the fund's adviser. Gating should be limited to truly dire circumstances and should require Commission approval.

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Please feel free to contact the undersigned with any questions about this letter. I can be reached by telephone at [redacted] and by email at [redacted].

Very truly yours,

Ronald M. Feiman

Cc: Chairman Designate Gary Gensler
Acting Chair Allison Herren Lee
Hon. Hester M. Peirce
Hon. Elad L. Roisman
Hon. Caroline A. Crenshaw
Michael Conley, Esq., Acting General Counsel
Sarah ten Siethoff, Esq., Acting Director, Division of Investment Management
Rick Fleming, Esq., Investor Advocate

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[3] As a thought experiment, one can conceive of the expanded development of short-term funding through exchange-traded funds, rather than traditional open-end funds. However, a transformation to that form of investment only moves responsibility for honoring any demand for redemption from institutional investors to authorized participants, and would force redemptions to reflect baskets of CP that might be difficult to trade, while shifting to retail investors a risk of selling their shares at a market discount that exceeds any net asset value reduction. I do not believe that investor protection warrants encouraging such risk-shifting arrangements.