Submitted Electronically

September 16, 2013

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE.,
Washington, D.C. 20549

Re: **Money Market Mutual Fund Reform - File Number S7-03-13**

Dear Ms. Murphy:

The SPARK Institute, Inc. appreciates this opportunity to respond to the Securities and Exchange Commission's (the "SEC") request for comments regarding the money market mutual fund (or "money market fund") reforms it is considering (the "Proposal").[1] The SPARK Institute is a not-for-profit organization that represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms and benefits consultants. Our members include most of the largest retirement plan record keepers and investment product platform providers that will be impacted by the changes the SEC is considering. Collectively, our members serve approximately 70 million participants in 401(k) plans and a substantial majority of the participants in 403(b) plans.

Our member companies include the retirement plan investment platform providers that enable and facilitate the use of money market funds by retirement plans. Such companies maintain the necessary trading and record keeping systems, and facilitate trading through omnibus accounts. In addition to making money market funds available to plan participants as a low risk capital preservation option, our member companies use such funds in connection with providing important administrative services to the plans. Money market funds with a stable net asset value ("NAV") serve a vital role with respect to such services. Our member companies also use money market funds as a liquidity buffer in certain retirement plan

1 78 Fed. Reg. 36,834 (June 19, 2013).

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separate accounts and plan specific funds (e.g., employer stock funds) for cash sweep purposes, and to handle the daily cash needs resulting from plan participant redemptions.

As of March 31, 2013, defined contribution plans invested $151 billion in money market funds.[2] Consequently, the changes being considered by the SEC, if adopted, will impact our member companies, tens of thousands of retirement plans and millions of plan participants. Depending on the approach taken by the SEC, the impact on retirement plans and their participants may be significantly detrimental, and could result in the limited availability, or elimination, of money market funds from such plans.

Although many of our member companies are affiliated with money market fund managers, our comments and recommendations are from the perspectives of retirement plan service providers and investment platform providers. The availability of money market funds to retirement plans and participants will depend on retirement plan service providers' ability and willingness to continue including such funds on their investment platforms and support their use after any new SEC rules take effect. As discussed more fully herein, the "Floating NAV Alternative" is generally operationally and administratively feasible for retirement plan service providers. However, we have significant issues and concerns about the "Standby Liquidity Fees and Gates Alternative" and the "Combined Alternative."

Our primary objectives regarding the reforms under consideration by the SEC are to ensure that any new rules that are adopted (1) will enable retirement plan service providers to continue to use and make money market funds available to retirement plans, (2) include alternatives that are operationally and administratively feasible for such service providers, and cost-effective for service providers and plan sponsors, and (3) provide adequate choices among money market funds for plan sponsors to be able to select one that has the characteristics that meets their preferences among principal stability, liquidity, or yield. We express no views or opinions regarding the SEC's goals and objectives for proposing the reforms and the potential effectiveness of such alternatives with respect thereto.

A. <u>Floating NAV Alternative</u>

The Floating NAV Alternative would require money market funds, other than "government" and "retail money market" funds (so called "prime money market funds") to float their NAV per share.[3] Government funds are defined generally as money market funds that maintain at least 80 percent of their total assets in cash, government securities, or repurchase agreements that are collateralized fully.[4] Government funds would also include treasury money market funds, i.e., funds that limit themselves to only holding U.S. Treasury obligations or repurchase agreements collateralized by the U.S.

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2 Investment Company Institute, The U.S. Retirement Market, First Quarter 2013 (June 2013).

3 <u>See</u> Proposed (FNAV) rule 270.2a-7(c)(1).

4 <u>See</u> Proposed (FNAV) rule 270.2a-7(c)(2).

The Floating NAV Alternative, with the exception for government funds, is generally administratively and operationally feasible for retirement plan service providers. Such service providers would be able to offer prime money market funds and government funds as plan investment options, and use government funds for plan administrative services. Although feasible, making the transition to floating NAV money market funds and making other changes that will almost certainly be necessary (e.g., to government funds or other investment options) will involve costs and complexities.

For example, if new rules are adopted, plan service providers will have to undertake a significant communication campaign to educate plan sponsors about the changes and their implications. Plan sponsors may be forced or elect to change the money market funds used by their plans. Changing plan investment options is a complex administrative process and also requires a communication plan for participants. Where a fund used by a plan must convert to a floating NAV, the service provider will be required to modify how the fund is set up on its system in order to accommodate daily pricing. This too will involve significant participant communication campaigns. Certain plans may have to use two money market funds (e.g., a floating NAV fund as a participant investment option and a fixed NAV fund for administrative and operational functions). This will add administrative cost and complexity for plan sponsors in operating a plan. Additionally, retirement plan separate accounts and plan specific funds that use money market funds for daily liquidity needs may be required to revise their investment guidelines. In some instances involving certain insurance contracts (e.g., variable life or group annuities), filings with state insurance regulators may be required. All of these contemplated changes will require adjustments to processes and procedures for service providers. Consequently, although this alternative is the most feasible among those being considered by the SEC, it should be recognized that implementing it will add costs and complexities for everyone involved.

Retail Funds - As noted above, retail funds would also not be required to float their NAV. Such funds would be defined as money market funds that do not permit a shareholder to redeem more than $1 million in a single business day.[5] Although this exception has some conceptual merit and may appeal to some retirement plans and service providers, in the absence of certain changes to the Proposal, it is unlikely that service providers will make such funds available through their investment platforms and systems.

As the SEC noted in the Proposal, there will be a number of issues and challenges associated with monitoring and enforcing the retail funds' daily redemption limit when such funds are held in omnibus accounts. This will be a significant issue for retirement plans because they generally hold their positions through omnibus accounts. Additionally, within each plan, individual participants are the beneficial owners of the funds. The Proposal includes a discussion about certain complexities in connection with elimination of a fund as an investment option and also discusses possible exceptions to the $1 million limit (e.g., higher redemption limits with advance notice). The Proposal also recognizes that in order for omnibus accounts to be able to use retail funds, the omnibus account

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[5] See Proposed (FNAV) rule 270.2a-7(c)(3)(i).

holder will have to enforce the redemption limit or facilitate increased transparency for the fund managers. Retirement plan service provider systems are not currently able to support either of those options.

According to our member companies, the system modification that would be required to monitor and enforce the redemption limits would be cost prohibitive. Developing actual cost estimates for such possible changes, at this time, would be premature and would also be time consuming and costly. Nevertheless, our member companies have the necessary expertise to recognize, with confidence, that the costs of the changes would preclude them from offering retail funds that impose a daily redemption limit on retirement plans. Most importantly, as discussed more fully below, retirement plan investors pose little or no threat to retail money market funds. Accordingly, the costs that would result from having to accommodate the retail fund daily redemption limit cannot be justified.

In addition to the foregoing, service providers are also concerned that plan sponsors will have their own significant concerns about such funds and, unless key issues are addressed, are not likely to include them in their plans. Plan sponsors and others who are responsible for selecting and monitoring investment options for participant-directed defined contribution plans are considered fiduciaries under the Employee Retirement Income Security Act ("ERISA"). As such, they have significant responsibilities and must act prudently.

As noted above, the Proposal includes a discussion about certain complexities in connection with a plan sponsor removing a fund where such redemption would exceed the daily limit.[6] In particular, the preamble discusses how the limit may be applied in the context of a plan-wide change that results in a complete liquidation of the plan's interest in a money market fund.[7] However, it is unclear from this discussion whether a plan sponsor-initiated plan-wide investment change would be subject to the daily redemption limit in the same way as participant-initiated transactions (i.e., the limit would apply at the individual participant level).[8] Further, even if the limit is applied at the participant level

6 See 78 Fed. Reg. 36,881 (June 19, 2013).

7 "As proposed, the omnibus account holder provision does not provide for any different treatment of intermediaries based on their characteristics and instead applies the redemption limits equally to all beneficial owners. However, in some circumstances such treatment may not be consistent with the intent of the exemption. For example, an intermediary with investment discretion, such as a defined-contribution pension plan that allows the plan sponsor to remove a money market fund from its offerings, could unilaterally liquidate in one day a quantity of fund shares that greatly exceeds the fund's redemption limit, even if no one beneficial owner had an account balance that exceeds the limit...We understand that identical treatment of intermediaries under the proposal may not precisely reflect the risks of intermediaries with different characteristics, but recognize that this is a cost of our attempt to keep the retail exemption simple to implement." (Emphasis added.) Id. at 36,861.

8 Some of our member companies read the language at issue to provide that the daily redemption limit would apply at the participant level regardless of whether the redemption is plan sponsor or participant initiated (i.e., a plan could liquidate its entire position in a retail money market fund in a single day, provided that no individual holds more than $1 million in the fund). Other members read the language as potentially barring a plan sponsor-initiated plan-wide redemption if the total redemption exceeds $1 million.

for a plan sponsor-initiated transaction, it is still possible that the Proposal would prevent a plan from completely liquidating all participants' holdings in a single day if an individual participant held over $1 million in the fund. If the redemption limit restricts a plan sponsor's ability to liquidate a plan's entire position in the fund on a single business day, it is unlikely that any plan sponsor, taking into consideration their fiduciary responsibilities under ERISA, will elect to include such fund in the plan. A plan sponsor must be able to remove an investment fund that it determines is no longer acceptable on reasonably short notice and without penalty.[9] To address such fiduciary concerns, it is important for the Proposal to clearly allow plan sponsors to implement necessary investment decisions regarding the plan's investment line-up, and to be able to do so without concern that any individual participant's money market fund holdings could delay or prevent implementation of those changes.

Plan sponsors will also be concerned about the limits on a participant's ability to take a plan distribution in the normal course of plan operations when such individual has invested more than the daily redemption limit. Plan provisions and the Internal Revenue Code (the "Code") impose specific rules on a participant taking a distribution or making a rollover to another tax-deferred retirement savings vehicle (e.g., an Individual Retirement Account or new employer plan). The daily redemption limit will add complexity to the distribution process and create unacceptable additional administrative burdens for plan sponsors. It will also create additional fiduciary risk for plan sponsors when an individual who is otherwise eligible to take a distribution or make a rollover is restricted from doing so in a single transaction because of the fund's redemption limit.

Accordingly, retirement plans are not likely to have retail money market funds widely available to them, and plan sponsors are not likely to include them as an investment option if the daily redemption limit is adopted as currently written. However, retail funds are more likely to be made available and may appeal to plan sponsors if the exception is modified in certain ways.

Recommendations: The SPARK Institute respectfully urges the SEC to modify the retail funds redemption limitation so that it does not apply to: (1) any redemption request made by a participant in connection with an account held in a participant-directed tax-exempt retirement plan[10]; and (2) any redemption request made by the plan sponsor or its designee in connection with removing a money market fund from a participant-directed tax-exempt retirement plan's investment options; provided that, the plan sponsor, or its designee (i.e., the plan service provider), notifies the fund manager in advance of such redemption pursuant to any agreement or understanding.

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9 See 29 C.F.R. § 2550.408b-2(c)(3).

10 The redemption limit exclusion proposed herein should apply, but not be limited, to the following types of retirement plans that include a participant-directed investment feature: (1) Code Section 401(k) and 403(b) plans; (2) Code Section 457(b) governmental plans; (3) Code Section 401(a) governmental and church plans; (4) Code Section 401(a) single-participant plans; and (5) Individual Retirement Accounts (IRAs).

The SPARK Institute believes that the recommended modification is consistent with the SEC's basis for proposing the retail exemption. As the SEC noted in the preamble of the Proposal, retail investors use money market funds for a variety of reasons, including, for example, to hold cash for short or long periods of time or to take a temporary "defensive position" in anticipation of declining equity markets.[11] Retirement plan investments are generally long-term because of the inherent nature of the plans as long-term savings vehicles. Short-term use of money market funds by retirement plans typically involves administrative and operational functions where a fixed NAV is vital.

Further, as noted by the SEC, retail investors historically have behaved differently from institutional investors in a crisis, being much less likely to make large redemptions quickly in response to the first sign of market stress.[12] Individual participants in retirement plans are among the investors that the SEC is trying to protect, and are not likely to be among the first to act in response to the first sign of market stress. They are not in a position to cause a run on a fund and pose no threat because the account balances of the vast majority of such individuals are less than $1 million. According to the Employee Benefit Research Institute ("EBRI"), approximately .21 percent (.0021) of retirement plan participants had more than $1 million in a single 401(k) plan, as of December 31, 2011.[13] Additionally, according to data from our member companies that provide record keeping services to approximately 32.3 million plan participants, only 1,536 (.00005 or .005%) of all such individuals held more than $1 million in a single money market fund, as of June 30, 2013. Such data is consistent with the SEC's conclusion that retail funds, as defined in the Proposal, would not have a concentrated shareholder base and are therefore less likely to experience large and unexpected redemptions that would put a strain on the fund's liquidity.[14] Exempting retirement plan participant-initiated redemptions from the redemption limit of the retail fund exemption, as proposed above, would not put a strain on a fund's liquidity.

Although a plan sponsor could use its authority and discretion to liquidate a plan's entire position in a money market fund, doing so to avoid potential losses in response to the first sign of financial stress is virtually inconceivable. Such decisions and changes typically occur only after a period of deliberation by the plan sponsor, taking into account its fiduciary responsibilities under ERISA. The plan sponsor is also required to provide participants with advance notice about such changes.[15] Accordingly, plan sponsors are

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11 See 78 Fed. Reg. 36,837 (June 19, 2013).

12 See Id. at 36,856.

13 EBRI tabulations from EBRI/ICI Participant-Directed Retirement Plan Data Collection Project (2011). We note that 2012 data was not available prior to the deadline for submitting comments about the Proposal.

14 Id.

15 For example, plan sponsors generally are required to provide 30 to 90 days advance notice of any change in the fund line-up in a participant-directed retirement plan. Plan sponsors generally also are required to provide participants with 30 days advance written notice before any "blackout" period (i.e., a period of more than three consecutive business days during which participants are unable to direct their plan investments). A blackout period may be required by a plan record keeper in order to replace a plan investment option. See

not in a position to act quickly in response to the first signs of market stress and would pose little, if any, threat to other investors in a retail fund by being permitted to liquidate a plan's entire position as proposed above.

Given the unique nature of retirement plan investments and plan sponsors' fiduciary obligations under ERISA, the timing and method of the advance notice required to be provided by a plan sponsor of its intent to liquidate a plan's position should not be dictated by the SEC in any new rules. Instead, the timing and method should be determined pursuant to an agreement or understanding between the fund manager and the plan sponsor (or its designee). In fact, this is already a common practice that is facilitated by plan service providers today when a plan sponsor decides to liquidate a position in any mutual fund. The plan service provider that makes the funds available to the plans and facilities trading typically knows how much advance notice the fund manager requests or requires prior to a large redemption. When a plan sponsor decides to liquidate a plan's entire position in a participant-directed plan, it must do so by working with the plan service provider, who informs the plan sponsor about any advance notice requirements. The service provider typically furnishes the required or requested notice to the fund manager according to the method agreed to between them, which should give the fund manager sufficient time to generate necessary liquidity to satisfy the request. Such approach has been effective and should be used to accommodate large money market fund liquidations by retirement plans without any further limits on aggregate or beneficial owner redemption amounts.

B. Standby Liquidity Fees and Gates Alternative

The Standby Liquidity Fees and Gates Alternative would allow money market funds to maintain a stable NAV under normal conditions but require that they take certain actions when certain low liquidity triggers are met. Simply stated, if a fund's liquidity falls below a certain threshold on any given business day, the fund will generally be required to impose a redemption fee starting the following business day. The fund will generally be able to suspend the redemption fee the business day after its liquidity levels are restored. Additionally, a fund will also be permitted to impose a "gate" on redemptions for a period of time (i.e., suspend all redemptions) when the low liquidity triggers are met.[16] Government funds would be exempt from the fees and gates rules under this alternative.[17] The Proposal does not provide a comparable exemption for retail funds.[18] The money market funds that will be subject to the foregoing redemption fees and gates rules are referred to herein as "non-exempt funds."

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29 C.F.R § 2550.404a-5(c)(1)(ii) (participant investment and fee notices) and 29 C.F.R. § 2520.101-3(b)(2)(i) (blackout periods).

16 See proposed (Fees & Gates) rule 270.2a-7(c)(2)(ii).

17 See proposed (Fees & Gates) rule 270.2a–7(c)(2)(iii).

18 See 78 Fed. Reg. 36,891 (June 19, 2013).

This alternative will be extremely administratively burdensome, cost prohibitive and create unacceptable risks for retirement plan service providers. Most retirement plan service providers' systems are able to monitor and impose redemption fees at the individual plan participant level. However, such systems are not capable of being adjusted overnight with respect to an individual fund in order to impose redemption fees or restrict redemptions when the fund falls below required liquidity levels on a given business day (and then immediately remove such restrictions when fund liquidity levels recover). Service providers must have reasonable advance notice and adequate time to follow their practices and procedures for making such changes. Such providers will be unable and unwilling to accept such responsibility and risk with respect to the funds. Additionally, such overnight changes would require a significant effort and demand on service providers' resources to notify every affected plan sponsor and potentially every plan participant. A single service provider could have thousands of plans and millions of participants that are affected. The notice and education efforts would be substantial and costly.

We also believe that plan sponsors will be reluctant to include a non-exempt fund in their plans because of the uncertainty and unpredictability of the fees and gates being imposed. Plan sponsors will be reluctant to undertake educating plan participants about such limitations and having to address their complaints when such restrictions are imposed. The fees and gates will also add complexity in connection with plan administration, including processing participant-initiated distributions, and other distributions required under the Code. For example, plans are required to distribute amounts that exceed certain limits by a specific date every year.[19] Additionally, participants who are age 70-1/2 and no longer employed generally must receive distributions by a certain date every year.[20] A redemption gate could prevent a plan sponsor from making a required distribution in a timely manner and subject such plan sponsor and the participants to penalties under the Code. Additionally, a redemption fee would impose a financial burden on individuals who are required to receive such distributions.[21] The fees and gates would also adversely impact individuals who are eligible to request a distribution from a plan (e.g., a retiree) by imposing the fee or by forcing them to delay taking the distribution for up to 30 days. Further, participants requesting distributions to address financial hardship or other immediate needs, like a medical emergency or the purchase of a home, would also be adversely affected by a redemption gate. Plan sponsors will view the requirements imposed on non-exempt funds as creating significant and unacceptable administrative burdens and potential fiduciary risk and liability for them.

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[19] For example, "excess deferrals" (i.e., amounts that exceed a participant's annual elective deferral limit under the Code) are required to be distributed annually by April 15th. See Code § 402(g)(2)(A)(ii).

[20] See Code § 401(a)(9).

[21] Plan participants are more likely to accept the variability associated with a floating NAV as opposed to having to pay a two percent redemption fee when taking a required or voluntary plan distribution.

Finally, where a non-exempt fund is used in connection with certain annuity contracts, the fees and gates that the fund may be required or permitted, respectively, to impose may conflict with the annuity contract holders' rights. Such non-exempt funds are not likely to be appropriate for use in such annuity contracts.

If the SEC were to adopt the Standby Liquidity Fees and Gates Alternative, government funds would be the only viable option for plan sponsors to include as investment options and for service providers to use for administrative and operational functions. The SPARK Institute believes that under this alternative, retirement plans will not have adequate choices among money market funds to be able to select one that has the characteristics that meets their preferences among principal stability, liquidity, or yield.[22] As noted above, non-exempt funds will create additional unacceptable burdens and risks for plan sponsors. Additionally, service providers are not likely to accommodate non-exempt funds. Therefore, money market funds that offer liquidity and potentially higher yields than government funds will not be available to retirement plans.

Recommendation: The SPARK Institute respectfully urges the SEC not to adopt the Standby Liquidity Fees and Gates Alternative as the only approach for money market funds. Such approach, if adopted at all, should be an alternative to the Floating NAV Alternative, modified as recommended herein. This will provide fund managers a choice between the different approaches and provide plan sponsors with reasonable alternatives to choose from so that they can continue to use money market funds.

C. Combined Alternative

The Combined Alternative will require money market funds (other than government funds and, regarding the floating NAV, retail funds) to both use a floating NAV and potentially impose liquidity fees or gates in times of fund and market stress.[23] This approach includes the requirements and limitations from the other alternatives that, as discussed above, will be problematic for retirement plans and plan service providers. First, the exception to the floating NAV will only apply to government funds. Second, the retail fund exception is administratively burdensome and cost prohibitive. As noted above, retirement plans are not likely to have retail money market funds available to them and plan sponsors are not likely to include them as an investment option, if the redemption limit on such funds is adopted as currently proposed by the SEC. Third, the standby redemption fees and gates will be extremely administratively burdensome, cost prohibitive and create unacceptable risks for retirement plan service providers and plan sponsors. Funds applying such restrictions are extremely unlikely to be offered by plan sponsors or made available to plans by retirement plan service providers.

Consequently, under the Combined Alternative, retirement plans will likely only have government funds available for use. As noted above, The SPARK Institute believes that this does not provide retirement plans with adequate choices among money market funds

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22 See 78 Fed. Reg. 36,915 (June 19, 2013).

23 See Id. at 36,901.

to be able to select one that has the characteristics that meets their preferences among principal stability, liquidity, or yield.

Recommendation: The SPARK Institute respectfully urges the SEC not to adopt the Combined Alternative.

D. Conclusion

As noted above, our primary objectives regarding the proposed reforms are to ensure that any new rules will enable retirement plan service providers to continue to use and make money market funds available to plans, and that plan sponsors will continue to have adequate choices among money market funds. For the reasons discussed herein, we are concerned that money market funds will either be eliminated from use or only be made available on a limited basis in participant-directed retirement plans if the SEC adopts either the Standby Liquidity Fees and Gates or Combined Alternatives. Under both alternatives it is likely that retirement plans will only have access to government funds. This could result in the loss of as much as $151 billion currently invested by defined contribution plans in money market funds. The Floating NAV Alternative is generally operationally and administratively feasible for retirement plan service providers. That said, without our proposed changes under the Floating NAV Alternative, retirement plans are not likely to be able to use retail funds.

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Thank you for considering our views and concerns regarding the Proposal. The SPARK Institute is available to provide additional information and clarification regarding our concerns. Please do not hesitate to contact us at (704) 987-0533.

Respectfully,

Larry H. Goldbrum
General Counsel