Wells Fargo Funds Management, LLC
525 Market Street, 12th Floor
San Francisco, CA 94105

September 16, 2013

Submitted Electronically

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

RE: File No. S7-03-13—Money Market Fund Reform; Amendments to Form PF

Dear Ms. Murphy:

I. Introduction

On behalf of Wells Fargo & Company and its subsidiaries, Wells Fargo Funds Management, LLC appreciates the opportunity to comment on the proposed amendments to rules governing money market mutual funds issued by the Securities and Exchange Commission ("Commission") on June 5, 2013 ("Proposals").[1]

Subsidiaries of Wells Fargo & Company advise and distribute the *Wells Fargo Advantage Funds*®. As of August 31, 2013, the *Wells Fargo Advantage Funds* had a total of approximately $252 billion in assets under management across a broad spectrum of investments. Our fund family offers a diverse set of money market funds across multiple distribution platforms that include retail and institutional investors. Assets under management in our advised money market funds totaled approximately $119 billion as of August 31, 2013, making Wells Fargo the ninth largest U.S. money market mutual fund provider in the industry. In managing the Wells Fargo Advantage Money Market Funds, we emphasize conservative investment choices and make preservation of capital and liquidity our highest priority.

Money market funds have long played an important role in our nation's economy, providing both retail and institutional investors with a liquid, stable, and diversified investment option, while at the same time providing a vital source of funding to businesses, states,

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1 Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (June 5, 2013) [78 FR 36834 (June 19, 2013)] ("Release").

municipalities and other local governments. We are supportive of the amendments to Rule 2a-7 under the Investment Company Act of 1940 ("1940 Act") adopted by the Commission in January 2010 ("2010 Amendments").[2] Following adoption of the 2010 Amendments, money market funds have successfully demonstrated their resiliency in the face of market distress, including the U.S. debt ceiling and European sovereign debt crises occurring in 2011.

While we believe the 2010 Amendments adequately reduced the risk that money market funds pose to financial stability, we do not oppose in principle additional measures to further strengthen money market funds and further reduce the risk of rapid and substantial redemptions, or "runs," during periods of market distress. We believe, however, that any further regulatory measures must strike an appropriate balance between the costs to investors and others, including businesses, states, municipalities and other local governments that rely on money market funds as a source of short-term credit, and any benefits in the form of a marginal reduction in run risk. We largely opposed the set of proposed recommendations issued by the Financial Stability Oversight Council ("FSOC") in November 2012 because we believed they lacked such balance.[3]

We view the Proposals as a significant step forward from the FSOC's proposed recommendations. As described further in this letter, we are pleased to support a number of measures, including standalone liquidity fees and gates, further diversification requirements, and many of the proposed new disclosure requirements. We still oppose, however, a variable net asset value ("NAV") requirement for any money market funds, whether as a standalone measure or in combination with liquidity fees and gates. Though we appreciate that the Proposals would mostly limit the variable NAV to those money market funds that have shown any susceptibility to runs—prime institutional money market funds—the Release does not provide a sound rationale as to why this measure will address or prevent such runs. This lack of demonstrable benefits is particularly troubling given the substantial costs to prime institutional money market fund investors, sponsors, and financial intermediaries, as well as to the businesses that rely on these funds for short-term credit.

Finally, notwithstanding our view that liquidity fees and gates are more appropriately tailored to curtail the risk of runs than a variable NAV requirement, we strongly oppose a combination of a variable NAV requirement with liquidity fees and gates. Such a combination will exacerbate, rather than cure, the problems associated with a variable NAV requirement. It is

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2 Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4. 2010)] ("2010 Release"). Among other things, the amendments to Rule 2a-7 adopted in the 2010 Release enhanced credit quality and liquidity requirements for money market funds.

3 *See* Proposed Recommendations Regarding Money Market Mutual Fund Reform, Financial Stability Oversight Council (Nov. 16, 2012) [77 FR 69455 (Nov. 19, 2012)] ("FSOC Proposal"). *See also* Letter from the Karla M. Rabusch, Wells Fargo Funds Management, LLC, regarding the FSOC Proposal, Jan. 17, 2013 ("FSOC Letter").

true that liquidity fees and gates represent a much more effective solution to the problem of runs with lower costs than a variable NAV requirement; but adding an effective lower cost measure to an ineffective high cost measure will only magnify overall costs without providing any greater benefit than simply adopting the effective measure alone. In fact, we believe that the proposed combination would lead nearly all investors to abandon prime institutional money market funds for alternatives such as government money market funds—which may not have the capacity to absorb the additional assets—and other alternatives that may pose their own risks to the financial system.

II. Discussion

a. Alternative I—Variable NAV

We oppose a variable NAV requirement for any money market funds, including prime institutional money market funds. As discussed further below, we believe that a variable NAV is neither necessary nor sufficient to prevent runs on prime institutional money market funds and thereby reduce systemic risk, but it will make prime institutional money market funds less useful or even uneconomic for many of the investors that currently rely on them for their liquidity management needs. As a result, and based on our discussions with clients, we expect that many institutional investors will shift their assets to alternatives, potentially drying up a much-needed source of credit for American businesses. In addition, this asset migration may have unintended market consequences and increase systemic risk.

i. A variable NAV is neither necessary nor sufficient to prevent runs.

The Release argues for the proposed variable NAV requirement principally on the grounds that a stable NAV provides a theoretical incentive for shareholders to redeem quickly from a money market fund with a falling market-based NAV to ensure they receive $1.00 per share before the fund "breaks the buck" (*i.e.*, is forced to abandon the stable $1.00 share price and re-price shares based on market value). Theoretical incentive and practical causation, however, are not one and the same. As we discussed in our FSOC Letter, recent practical experience in the form of significant redemptions from European variable NAV money market funds and U.S. ultra-short bond funds during the financial crisis of 2008 showed that a variable NAV likely does not prevent runs.

To address the counterexample provided by the runs on European money market funds in 2008, the Release draws a fine distinction between the particular pricing method of European money market funds and the proposed pricing method for U.S. prime institutional money market funds. That is, European money market funds achieve a variable NAV by retaining income rather than by pricing shares according to market value. The Release indicates that this difference makes European money market funds' experience in 2008 an inapt test case for Commission's variable NAV proposal. U.S. ultra-short bond funds, however, maintain a variable NAV by pricing shares based on market value—much like prime institutional money market funds would under the Proposals—and yet those funds also saw significant redemptions in 2008. We would argue that taken together, the experience of European variable NAV money market funds and U.S. ultra-short bond funds demonstrate that investors have a tendency to redeem from investments with marginally more risk in a crisis regardless of the pricing method (*e.g.,* prime money market funds and ultra-short bond funds), and invest in the safest available options (*e.g.,* government money market funds). As such, requiring prime institutional money market funds to operate with a variable NAV will not likely change investor behavior in a crisis.

The Release alternately argues that a stable NAV obscures the risks of money market funds by failing to expose investors to the fact that the market value of shares may fluctuate—the notion being that investors who observe share price fluctuation will become more tolerant of losses and less likely to run. We note that this rationale conflicts somewhat with the Release's hypothesis that runs on money market funds occur because certain investors acutely understand that the market value of shares may deviate materially from $1.00 and redeem quickly at the first sign of distress to ensure they receive $1.00 per share. Even assuming, however, that investor misunderstanding of money market funds' risks and pricing method causes runs, better disclosure and investor education would provide a much more efficient means to address that problem. For example, the Proposals include a requirement that money market funds make daily website disclosure of market-based NAVs calculated to the nearest 1/100 of 1%—a proposal that Wells Fargo and numerous other fund sponsors have already voluntarily adopted. This disclosure accomplishes the purpose of allowing investors to readily observe deviations between market-based NAVs and $1.00 and thereby better understand and appreciate money market fund risks, but without sweeping structural changes that could threaten the viability of this critical investment option.

ii. A variable NAV requirement will make prime institutional money market funds significantly less useful to investors and financial intermediaries—creating substantial costs for investors, financial intermediaries, fund sponsors, other market participants, and the financial system at large.

A variable NAV requirement would likely have a significant negative impact on investors. Some investors, including corporate liquidity managers, municipalities and trustees, may face hurdles, such as governing investment guidelines, that may prevent them from investing in anything but a stable value money market fund. We believe a substantial portion of investors who had originally sought the share price stability associated with stable NAV funds would view variable NAV funds as unusable for their short-term cash needs and seek to shift their assets elsewhere. Surveys have shown that a variable NAV would cause significant numbers of money market fund investors to either reduce their investments in money market funds or abandon these funds altogether. For example, the Investment Company Institute commissioned a survey of 203 corporate, government, and institutional investors in 2012 concerning, among other things, a variable NAV requirement for money market funds.[4] The results provided cause for concern: 79% percent of respondents who currently invest in money market funds said that they would either decrease or stop investing in money market funds in response to a variable NAV requirement. This result was further supported by a separate study conducted by the Association of Financial Professionals of corporate, non-profit, and government investors.[5] That study showed that, in response to a variable NAV requirement, up to 65% of respondent organizations would be less willing to invest in money market funds and/or would reduce or eliminate their holdings of money market funds.

The estimates in the Release regarding the costs of a variable NAV to institutional money market fund shareholders further demonstrate why many of them would abandon prime money market funds. The Release correctly points out that, in response to a variable NAV requirement, many institutional shareholders will require modifications to systems and related procedures and controls related to recordkeeping, accounting, trading, cash management, and bank reconciliations, as well as training concerning these modifications. The Release breaks these shareholders into two groups: (i) those that would require less extensive and labor-intensive modifications, and (ii) those that would require more extensive and labor-intensive modifications. Among the former group, the Release estimates that each shareholder will incur one-time costs ranging from $123,000 to $253,000.[6] Among the latter group, the Release estimates one-time costs ranging from $1.4 million to $2.9 million per shareholder. These costs may not appear substantial at first glance, but when viewed in the context of current money market fund returns, they will provide a tremendous disincentive to continued investment in prime institutional money market funds. To provide an example, we will assume that an institutional shareholder with $10,000,000 invested in prime money market funds requires the minimum in systems modifications and incurs the minimum estimated one-time costs—$123,000. We will further assume that the shareholder earns 0.04% annually from its investments in prime money market funds—0.04% being the average prime money market fund

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4 *See Money Market Fund Regulations, The Voice of the Treasurer*, April 2012, available at http://www.ici.org/pressroom/news/12_news_tsi_study. We recognize that the study tested application of a variable NAV requirement on all money market funds and that the Commission's proposal only concerns prime institutional money market funds. We believe, however, that the study accurately reflects investor sentiment about variable NAV money market funds in general, and supports our contention that the Commission's proposal would cause a significant migration of assets from prime money market funds to government money market funds and other alternatives. As we discuss below, the migration of assets to government money market funds and other alternatives may create its own adverse consequences.

5 *See 2013 AFP Liquidity Survey: Introduction and Key Findings*, available at http://www.afponline.org/liquidity/.

6 *See* Release at note 300 and accompanying text.

annual return in 2012.[7] Under these assumptions, the lowest estimated one-time costs would represent more than thirty years of returns for such a shareholder.[8]

A variable NAV requirement also poses significant problems for financial intermediaries using money market funds as cash sweep options for their clients. Cash sweep programs permit investors to keep their cash invested and yet still retain ready access to their funds throughout the trading day. These programs rely on the predictability of sweep balances to facilitate same-day investment of newly available cash into designated money market fund sweep shares and to permit the same day availability of the proceeds from redeemed money market fund shares either for reinvestment or withdrawal. The Release contains speculation that a variable NAV requirement will not render prime institutional funds impractical as sweep options because fund sponsors, intermediaries, and pricing services will make modifications necessary to price shares at periodic times throughout the day—presumably only to wire redemption proceeds at the end of the day.[9] This may be theoretically possible, but the associated costs and complexity would be substantial. Broker-dealers offering sweep platforms would have to re-program their systems to track variable prices at set times during the trading day and reconcile each redemption with the then-operative share price—assuring that redemption proceeds are paid to shareholders at the end of the day according to the correct intra-day prices. The fact that fund sponsors would not necessarily standardize the times of day at which they price shares would make this process all the more complex for broker-dealers offering different sponsors' money market funds as sweep options. Given the substantial cost and complexity associated with intra-day pricing, and based on our conversations with intermediaries, we believe that many intermediaries will discontinue offering prime institutional money market funds as sweep options, turning to government money market funds or other alternatives.

Movement of institutional assets to government money market funds due to a variable NAV requirement for prime institutional funds may seem benign at a first glance—and in fact, the Release treats it as the default option for those investors who continue to require or desire stability in value. The market for U.S. Government securities and repurchase agreements collateralized by U.S. government securities is, however, not limitless.[10] In addition, short-term

7 Average returns calculated based on data from iMoneyNet.

8 $10,000,000 investment x 0.04% of assets per annum = $4,000 in returns per annum. $123,000 in one-time costs / $4,000 in returns per annum = 30.75 years of returns (without compounding returns). We recognize, of course, that in the present low interest rate environment, money market funds have provided historically low returns. Investors will, however, make the decision as to whether to spend the money and devote the resources necessary to adapt to variable NAV money market funds in this present low interest, low return environment.

9 *See* Release at note 298 and accompanying text.

10 In fact, due in part to stricter capital standards for financial institutions, the supply of repurchase agreements available to government money market funds has declined substantially in recent years. The U.S. repurchase market is reported to have shrunk 35%, from an estimated $7.02

Treasury rates have been at or near 0% for years. In fact, we have had to close or restrict new investments in our government money market funds on several occasions over the last five years when Treasury and/or Treasury repurchase agreement rates dropped below 0%. We believe that increased demand resulting from adoption of the Proposals may push those yields into negative territory for some time. As a result, many government money market funds will likely close to new investment (or close altogether), and investors will be forced to choose alternatives.[11] Some other investment alternatives—such as repurchase agreements and direct purchase of commercial paper—are unregulated or less regulated than money market funds, offer less reporting and transparency, and may entail greater idiosyncratic risks, counter-party and non-diversification risks in particular. Even depository accounts present a greater degree of counter-party risk to the extent that investors' balances exceed federal depository insurance limits. As such, any proposal that causes investors to abandon money market funds in favor of these alternatives may actually compound systemic risk and thus frustrate the central objective underlying the Proposals.

Of course, the migration of assets from prime money market funds to government money market funds and other alternatives will also harm businesses that rely on prime money market funds as an efficient source of short-term credit. To the extent that investors redeem their investments from variable NAV prime money market funds, these businesses and governments will likely have to look for credit elsewhere. Neither the FSOC nor the Commission has been able to adequately ascertain whether efficient alternate sources of credit will materialize. Potential alternatives include bank loans, but banks may have to raise significant additional capital to accommodate these loans or face other constraints. These businesses could also sell short-term debt directly to investors, but it is unclear whether a market of necessary scale and efficiency would develop to meet their needs. Even if alternative sources of credit develop, they may prove unavailable during times of market stress.

In addition to the costs imposed on investors, a variable NAV requirement will impose costs on sponsors that may lead some to discontinue offering prime money market funds or exit the money market fund business entirely. Again, the Commission's own cost estimates demonstrate the difficult choice that fund sponsors will face. For example, the Release contains

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trillion daily outstanding in the first quarter 2008 to an estimated $4.6 trillion daily outstanding in July 2013. *See* "Repo Market Decline Raises Alarm as Regulation Strains Debt," Bloomberg (Aug. 19, 2013), available at http://www.bloomberg.com/news/2013-08-19/repo-market-decline-raises-alarm-as-regulation-strains-debt-1-.html.

11 Because of capacity constraints that will likely face government money market funds if the Commission adopts the proposed variable NAV requirement, we strongly support the Commission's proposal to exempt government money market funds as the Commission has defined them—*i.e.*, those money market funds that invest at least 80% in government securities, cash, and repurchase agreements backed by government securities. We believe that preserving the flexibility for these funds to hold a small portion of non-government assets may marginally help managers cope with low yields and reduced supply of government securities.

estimates of the one-time costs for funds, transfer agents, custodians and intermediaries in the distribution chain to modify procedures and controls to accommodate a variable NAV. Specifically, the Commission has estimated one-times costs of $1.2 million to $3.2 million per entity for these purposes.[12] Ultimately, to the extent that funds bear these costs, a significant portion of such costs will be passed on to fund sponsors. That is, in the current low interest rate environment, fund sponsors have had to waive fees and reimburse expenses to a significant degree to assure that money market funds provide shareholders with even a modest yield. The variable NAV requirement will increase expenses requiring reimbursement by sponsors and thus cut significantly into any remaining profitability of the money market fund business. Large, well-capitalized money market fund sponsors may choose to absorb these costs for the time being in hopes that interest rates, yields, and profitability will increase in future years. However, smaller sponsors may choose to exit the business, which will lead to further industry consolidation and reduced competition.

Ultimately, the variable NAV proposal will create significant burdens and costs for many market participants. If a variable NAV were shown to prevent runs on money market funds and resulting systemic problems, these costs might be justifiable. The Commission has not demonstrated, however, that a variable NAV would be effective, which makes imposing these costs inconsistent with its mandate to promote efficiency, competition, and capital formation.

iii. If the Commission chooses to adopt a variable NAV requirement for prime institutional money market funds, it must take certain steps to make the rule workable.

We recognize that despite concerns raised in this letter and others, the Commission may adopt a variable NAV requirement for prime institutional money market funds. While we fear that such a measure will prove overly burdensome, costly, and disruptive, the Commission can take certain steps to reduce these adverse effects. As described below, these measures include: (i) adopting a workable retail exemption; (ii) adopting a separate categorical exemption for municipal/tax-free money market funds; and (iii) ensuring that the IRS will adopt meaningful relief from the burdens of tracking and reporting gains and losses by shareholders in variable NAV money market funds.

1. Retail Exemption

We support a retail exemption from the variable NAV requirement. Though we do not believe that the Release has adequately explained why any category of shareholders or funds should be subject to a variable NAV, the Release provides data demonstrating that retail money market funds are least susceptible to runs.[13] We also recognize the difficulty of crafting a

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12 *See* Release at 123.

13 *See* Release at 72-73.

definition and exemption for retail investors and retail funds that will neither prove over-inclusive—*i.e.*, permit investments by shareholders that are undeniably institutional in nature—or under-inclusive—*i.e.*, prohibit investments by shareholders that are undeniably retail in nature. But even if a potential definition and exemption strikes an appropriate balance, it will only benefit shareholders if fund sponsors and intermediaries can feasibly implement it. We do not believe that the Commission's proposed retail exemption for funds, which limits redemptions to $1 million per shareholder daily, is operationally feasible or cost efficient. Therefore, we urge the Commission to adopt an alternative retail definition/exemption that will prove workable. Specifically, we urge the Commission to exempt as "retail" any prime money market funds that limit investment to accounts registered with a social security number.

An exemption based on social security numbers has significant advantages. First, it assures that retail funds remain truly "retail" in nature because it would limit investment to accounts belonging to individual people, as opposed to institutions. Such a definition also assures that these individual investors are not subject to arbitrary limitations on the investment and availability of their funds, as they would be with a maximum account balance or daily redemption limit. Retail shareholders may not entirely appreciate or understand such limitations, and even to the extent they do, such limitations may make investing in money market funds less efficient and more complex. For example, with a redemption limit, an individual seeking to complete a major purchase may have to plan redemptions on separate days in advance to assure the availability of funds. By contrast, with an exemption based on social security numbers, an individual would have unfettered access to his or her funds.

Secondly, unlike the proposed redemption limit, a social security number-based exemption would prove operationally feasible, and therefore will ensure that sponsors and intermediaries continue to offer stable NAV retail prime funds. In discussing the proposed $1 million redemption limit with intermediaries offering our advised money market funds, they indicated that they do not have the operational capability to aggregate redemptions across multiple underlying accounts with the same beneficial owner in real time each day and that it would prove prohibitively expensive to develop that capability. Of course, under the Proposals, they would effectively also have to ensure that the redemption limit is also enforced all the way down any chain of intermediaries (*e.g.*, when an investor purchases fund shares through one intermediary, such as an introducing broker or retirement plan, which then purchases the fund shares through a second intermediary, such as a clearing broker). The intermediaries we consulted indicated that enforcing a redemption limit in real time all the way down such a chain would likely prove impossible. Faced with the effective requirement to do so, we fear they will simply shift retail assets to government money market funds or other less-regulated alternatives, with the attendant consequences described above.

An exemption based on social security numbers would prove comparatively simple. It would require screening of potential shareholders at the time that they open an account, but would not create any of the operational burdens and complexity associated with monitoring and potentially blocking errant redemptions in real time.

2. Municipal Money Market Funds

The Commission should exempt municipal money market funds from the proposed variable NAV requirement. While municipal funds carry a greater degree of credit risk than government money market funds, they have lower liquidity risk than prime funds because they concentrate investments in demand notes with third-party liquidity support. Furthermore, these funds make up a small and systemically insignificant portion of money market funds overall. In essence, a run on one or more municipal money market funds would not itself damage the larger financial system. In addition, because municipal money market funds have an entirely unique portfolio composition—80% or more in municipal securities—a run on those funds would be unlikely to have contagion effects on other kinds of money market funds.

The Commission has not proposed a categorical exemption for municipal money market funds because it hypothesizes that these funds cater to retail investors seeking the tax advantages of municipal securities, and that therefore these funds and their shareholders should be able to comply with the retail exemption's redemption limit. However, we have institutional shareholders who invest in our municipal money market funds, not because of the tax advantages, but because of the funds' particular risk/return profile. Some of these shareholders have large balances, such that we believe they may require the ability to redeem more than $1 million in a given day. Despite the fact that these funds have institutional shareholders, they still do not pose significant systemic risks given their small scale and lower liquidity risk. As such, we believe that they should be categorically exempt from the variable NAV requirement.

Whether or not the Commission adopts a categorical exemption for municipal money market funds, we would oppose a requirement that these funds' portfolios hold at least 10% daily liquid assets. We do not believe the supply of daily liquid municipal securities would be large enough to meet the resulting greater demand. The Commission recognized this fact in the 2010 Release when it stated, "We understand that most of the [municipal money market fund] portfolios consist of longer term floating and variable-rate securities with seven-day demand features from which the fund obtains much of its liquidity, and that they are unlikely to have investment alternatives that would permit them to meet a daily liquidity requirement."[14]

3. Tax Issues

As recognized in the Release, a variable NAV would also present significant federal income tax challenges for many investors and fund sponsors because investors purchase and redeem money market fund shares frequently, often on a daily basis. In essence, with a variable NAV, each redemption could produce a capital gain or loss that would have to be tracked and reported. To minimize this burden, the Release states that the U.S. Treasury Department

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[14] 2010 Release at note 243.

("Treasury") and the Internal Revenue Service ("IRS") are considering alternatives for modifying forms and guidance to include net information reporting by funds of realized gains and losses for sales of all mutual fund shares and to allow summary income tax reporting by shareholders. Of course, we would welcome any such relief, but believe only a complete exemption from reporting gains and losses could adequately address the problem.[15] Regardless of the form of relief, however, we question whether the Commission can adequately conduct a cost benefit analysis of a variable NAV requirement without knowing whether the IRS and Treasury will actually adopt any such relief. That is, we expect that tax burdens will cause a significant portion of institutional investors to shift assets to government money market funds and other less-regulated alternatives. That fact alone appears material in determining whether to adopt a variable NAV requirement. We do not believe that the Commission can reasonably evaluate the costs and benefits associated with adopting a variable NAV without knowing whether the IRS and Treasury will limit some of the tax tracking and reporting burdens.[16]

In addition to the burdens associated with tracking and reporting all small gains and losses, so-called "wash sale" rules could limit the extent to which variable NAV prime institutional fund shareholders could deduct any loss on shares held for a short period. We appreciate that the IRS issued proposed guidance that would provide *de minimis* exemption from wash sale rules for relatively small losses (less than 0.5%) incurred by shareholders in variable NAV money market funds.[17] However, the IRS proposal does not sufficiently solve the problem for shareholders and fund sponsors; shareholders and fund sponsors will still be required to track losses to determine whether each loss meets the *de minimis* exemption, which will increase their costs substantially. We would advocate a categorical exemption from wash sale rules for investments in variable NAV money market funds. Money market fund shareholders are highly unlikely to see losses of more than the proposed *de minimis* amount at any time; therefore, we do not believe that requiring shareholders and fund sponsors to devote the resources necessary continually track all losses to avoid deduction of any losses that exceed the proposed *de minimis* amount makes sense.

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15 The Commission could also reduce the tax tracking and reporting burdens, not to mention other operational burdens, by abandoning the proposal to require prime institutional money market funds to price shares to the nearest basis point (e.g., to the fourth decimal place for shares priced at $1.0000). This would require prime institutional money market funds to both value shares and transact at a price calculated with ten times the precision of other mutual funds.

16 At the very least, we would urge the Commission to provide a reasonable period for firms to come into compliance with a variable NAV requirement *after* any tax rulemaking. That is, providing a two-year compliance period will not help if Treasury and IRS complete any rulemaking later in that period.

17 *See* Application of Wash Sale Rules to Money Market Funds, IRS Notice 2013-48, available at http://www.irs.gov/pub/irs-drop/n-13-48.pdf.

b. Alternative II—Standby Liquidity Fees and Gates

Under the Commission's second proposal, certain money market funds would be required to impose standby liquidity fees ("Fees") on redemptions (unless a fund's board of directors determines that it is not in the best interest of the fund to do so) if a fund's weekly liquid assets falls below a specified threshold and, under such circumstances, would be permitted to temporarily suspend redemptions ("Gates") (collectively, "Fees and Gates" or "Fees and Gates Proposal"). For the reasons discussed below, we support Fees and Gates as a standalone alternative.

i. The Fees and Gates Proposal strikes a more appropriate balance of costs and benefits while largely preserving the most valued features of money market funds.

We support the core elements of the Fees and Gates Proposal because it is the only alternative in the Release that legitimately calibrates the imposed costs of the regulation to its stated policy benefits. Prime money market fund investors, the short-term markets and businesses that rely on funds for financing would each benefit from the ability of Fees and Gates, during distressed market conditions, to reduce the susceptibility of subject funds to runs and blunt the spread of deleterious contagion effects. There is no evidence, however, that prime money market funds are vulnerable to debilitating runs during ordinary market conditions. The periods of financial crisis in which prime money market funds have shown such vulnerability have been relatively rare.

The appeal of the Fees and Gates Proposal then derives to a significant extent from its ability, in most circumstances, to accommodate the critical attributes of prime money market funds most valued by investors—notably principal stability—and preserve the financing benefits these funds impart to businesses, while providing remedial tools to effectively mitigate run risk only in the rare instances when that risk becomes acute. Preservation of money market funds' key attributes does not suggest that adoption of the Fees and Gates will be without significant cost, both in terms of implementation and ongoing costs and the indirect costs from a potential contraction of prime money market fund assets. While the anticipated costs of Fees and Gates are significant, they are substantially lower than the costs of imposing overly broad regulation that would permanently eliminate a key attribute of institutional prime money market funds, as the Floating NAV would. Thus, from a cost-benefit perspective, among the alternatives proposed in the Release, the standalone Fees and Gates Proposal is narrowly tailored to impose costs that are commensurate with the targeted benefits and only when necessary to directly address risk.

ii. Fees and Gates are well designed to effectively mitigate run and contagion risk, while allowing money market funds to continue to prioritize safety and the preservation of principal.

We support the basic design and features of the Fees and Gates Proposal as an effective set of tools to stem potential runs and mitigate contagion risks in a financial crisis. While not eliminating an investor's incentive to redeem based on the stable NAV structure of a fund, the proposal reduces the susceptibility that a prime money market fund may have concentrated redemptions during market distress by constructing a ring fence around the core vulnerability of a fund in this predicament. As discussed below, Fees and Gates provide multiple mechanisms to remediate the central quandary that a prime money market fund faces when redemption pressures spike in stressed markets: depletion of on-hand liquidity sources to satisfy redemptions at a time when the replenishment of liquidity from external sources commands a premium.

When imposed, Fees should significantly decelerate or limit redemption activity (and in turn the depletion of a fund's liquidity levels), and thereby provide the opportunity for a fund to internally rebuild liquidity levels from maturing portfolio securities or from the repayment of principal upon the exercise of a demand feature. With respect to redemptions made subject to a Fee, a Fund is generally paid proportionate compensation for furnishing liquidity at a premium. In this regard, to the extent the amount of the Fee paid exceeds the associated cost to the fund, the additional amounts act to repair a fund's market-based NAV. Fees can not only monetize redemption activity in a manner accretive to the NAV but could support a special distribution to non-redeeming shareholders. Thus, Fees have the two-fold benefit of providing both a disincentive for shareholders who might redeem out of panic or precaution (but not need) to remain in a fund and an affirmative incentive for remaining shareholders to potentially benefit from a special distribution.[18] All the while, those shareholders that require liquidity are permitted to pay up for access to monies without shifting the increased costs of liquidity to the fund and non-redeeming shareholders. In this regard, Fees function in a self-executing manner to re-allocate incremental liquidity costs efficiently from a fund and its non-redeeming shareholders to those parties that elect to bear the premium. Investors will most certainly be cognizant of Fees as part of their investment evaluation, and the potential imposition of Fees achieves the Commission's stated policy goal of making the risks of investing in money market funds more transparent.

As the only measure proposed by the Commission that can actually halt a run, Gates provide a backstop in situations where Fees may not adequately recoup a fund's actual liquidity expenses. Suspensions of redemptions on a temporary basis establish a respite that enables a fund to regenerate internal liquidity from the repayment of principal and interest on maturing or putable portfolio securities and avoid incurring losses from distressed sales in the secondary market that would otherwise be necessary to satisfy redemptions. In this respect, the imposition of Gates also contributes to the mitigation of contagion risk. The ability for one money market fund to avoid a distressed sale after a Gate comes down has a salubrious effect on the valuations of other funds holding the same security because the other funds avoid a pricing mark down in

[18] *See* Section II.b.v. below for a discussion of suggested tax relief that, if implemented, would strengthen the ability of Fees to incentivize shareholders to remain in a money fund.

the holding that otherwise would have been precipitated by the distressed sale. For prime money market fund portfolios comprised of high quality, short-term debt instruments, the simple passage of time free from the obligation to dispose of holdings in unfavorable market conditions is normally all that is needed for a fund to re-establish normal liquidity and avoid the incurrence of debilitating capital losses. We are mindful that shareholders in the Reserve Prime Fund ultimately recovered 99%[19] or more of the value of their holdings. Gates are well designed to provide the requisite time and temporary immunity from redemption obligations necessary for a fund to internally recover liquidity levels, while not fundamentally impairing the redeemability of fund shares under the 1940 Act. For the same reasons, in circumstances in which a fund's board of directors determines to initially impose a Gate in lieu of a Fee, a Gate functions with equal efficacy as a front-line measure to ameliorate a fund's temporary deficiency in liquidity levels, or, when initially activated for one or two days, to allow shareholders to receive prior notice of the imposition of a Fee and provide them an opportunity to assess their options. And, as with the potential for a Fee, the potential for a Gate also increases risk transparency to investors.

The linchpin of the Fees and Gates Proposal is the flexibility given to a fund's board to exercise discretion in the best interests of a fund and its shareholders in determining the most appropriate course of action. The default amount of the 2% Fee, the triggering threshold at 15% of weekly liquid assets and the ability to impose Gates for up to 30 days establish a solid baseline against which the condition of a fund can be assessed and addressed under the then prevailing market conditions. The particular form of financial distress giving rise to heightened redemption pressures on prime money market funds—and therefore the most effective means to respond and address the specific exigencies of the situation—cannot be understood in advance. By virtue of its discretionary application and the availability of multiple tools, imposed either in isolation or on a combined basis (in potentially different sequences), the Fees and Gates Proposal is adaptable to the diverse circumstances and redemption pressures that prime money market funds may face in the future. For example, we posit that there may be situations in which it is deemed in the best interests of a fund and its shareholders to initially impose a Gate for a day or two to notify shareholders that a Fee will apply to redemptions after the Gate is lifted; funds would still retain the ability to impose a Gate at a later time as a potential backstop if necessary. The proposal is designed with sufficient flexibility to accommodate a multi-faceted approach to addressing complex and challenging situations.

One of the principal criticisms leveled against Fees and Gates is the potential for preemptive runs by shareholders seeking to avoid imposition of Fees or Gates before they become effective.[20] We concur with the statement of Commissioner Paredes that the concern

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19 *See* Release at note 32.

20 *See* Release at 163. *See also* Patrick E. McCabe et al., The Minimum Balance at Risk: A Proposal to Mitigate the Systemic Risks Posed by Money Market Funds, at 7.

over preemptive redemptions is overstated.[21] The ability for fund investors to frequently and aggressively "game" and avoid the potential imposition of Fees or Gates is undermined by the element of uncertainty inherent in a fund board's discretion to impose a Fee or a Gate. More importantly, in conjunction with the Commission's proposed requirement to provide website disclosure of a fund's daily and weekly liquid asset levels on a daily basis, money market fund advisers will be tremendously incentivized to manage a fund's liquidity levels in a prudent fashion that we expect will normally exceed the minimum levels required by Rule 2a-7. Fund advisers would be keenly aware of potential significant reputational damage and loss of business that could result from triggering the imposition of an otherwise avoidable Fee or Gate. We expect that fund managers will jealously guard against these risks by building a baseline of fund liquidity that is more conservative than required minimum levels and model stress tests for liquidity risks in a manner more acutely attuned to potential adverse market conditions, shareholder concentration and unanticipated flows, among other factors. As a market-based mechanism, the Fees and Gates Proposal structures robust incentives for fund managers to vigilantly monitor and manage liquidity depletion risk. In turn, fund shareholders, vested in the interest of avoiding impaired or more expensive liquidity in their shares from a potential Fee or a Gate, reinforce a fund adviser's ongoing prudent management by exerting market discipline over a fund's liquidity levels. It is through these mechanisms that the Fees and Gates Proposal substantially promotes efficiency and competition. Moreover, the proposal, indirectly through largely preserving the benefits of prime money market funds to the businesses that rely on them, fosters capital formation in the markets.

While the market-based dynamics described above should normally avert increased redemption stresses based on liquidity triggers, we do not preclude the possibility that preemptive redemptions could occur in rare instances due to, for example, a sudden erosion of weekly liquidity levels due to unforeseeable market reasons beyond the control of the fund manager. In these unusual scenarios, Fees and Gates operate to remediate a fund's liquidity deficiency by applying equally effective countermeasures to preemptive redemption activity. The strength and effectiveness of these countermeasures are discussed above. In addition, Fees and Gates reduce contagion risk because if redemption pressures in one fund increase those pressures in others, Fees and Gates would be applied recursively to affected funds by their respective boards. As a general proposition, boards of funds across the industry are entrusted to perform, and have performed, oversight of all matters crucial to a fund's operations in a manner consistent with the best interests of funds and their shareholders. Similarly, if and when the imposition of Fees and Gates may become necessary, we expect that boards will exercise their fiduciary duties with respect to the potential imposition of Fees and Gates in a consistent manner that, in the aggregate, will reduce run risk to funds. The mitigation of that risk, in turn, softens the impact of concentrated redemptions on the short-term markets.

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[21] *See* Statement at Open Meeting Regarding a Rule Proposal on Money Market Fund Reform of Commissioner Troy A. Paredes, June 5, 2013.

iii. Municipal money market funds should be exempted from the scope of the Fees and Gates Proposal.

Municipal money market funds should benefit from the same exemption from Fees and Gates that government money market funds would enjoy under the proposal. The susceptibility of municipal money market funds to concentrated redemptions in distressed markets is limited. While municipal money market funds do carry a greater degree of credit risk than government money market funds, municipal money market funds have lower liquidity risk than prime money market funds because they concentrate investments in demand notes with third-party liquidity support. In the discussion of possible exemptions from Fees and Gates in the Release, we note that the concerns cited over lower liquidity and the potential inability of municipal money market funds to manage redemption activity are formulated in speculative rather than definitive terms (*i.e.*, "[municipal money market funds]…might not be able to manage…" or "…could come under pressure"[22]). The implied characterization of the degree of risk posed by municipal money market funds in the Release does not, however, comport to relevant historical data. In the 2008 financial crisis, the flights to quality, liquidity, and transparency were principally flights away from prime money market funds to government money market funds, as municipal money market funds, as a whole, experienced only a very modest net outflow shortly followed by a rebound in net assets. In fact, Commission staff and other studies analyzing money market fund redemptions in September 2008 have covered municipal money market funds in passing mention, if at all,[23] which belies an actual lower degree of risk associated with municipal money market funds than that postulated in the Release. Although the potential impacts from the imposition of Fees and Gates on municipal money market funds, including potential contractions in fund assets, are not quantifiable with certainty, we believe that the application of the Fees and Gates Proposal to municipal money market funds is not warranted on the basis of merely speculative risks that are at variance with actual redemption activity during distressed markets.

iv. Stable NAV funds should be permitted to continue using the amortized cost method of valuation.

It is critical that stable NAV funds[24] be permitted to continue to use the amortized cost method of valuation, and the threadbare arguments in the Release supporting its proposed elimination fail to adequately justify the proposal. As a general matter, we agree with the views

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22 Release at 198-199.

23 *See, e.g.*, Study prepared by Commission staff from the Division of Risk, Strategy, and Financial Innovation at Section 3.A., and Patrick E. McCabe, The Cross Section of Money Market Fund Risks and Financial Crises, Federal Reserve Board Finance and Economic Discussion Series Paper No. 2010-51 (2010) at 4.

24 The discussion in this section applies to funds under the Fees and Gates Proposal as well as to funds that would be exempted from a floating NAV requirement under that alternative.

of accounting experts who conclude that the use of amortized cost is a fair and appropriate methodology for valuing money market funds holding short-term, high-quality investments.[25] Amortized cost valuation not only relieves a fund of the substantial cost burdens of pricing each portfolio security using market factors, it also obviates the significant time pressures associated with obtaining or conducting market-based valuations. Without the associated savings in time afforded by amortized cost valuation, funds would not be able to, among other things, continue to provide fund shareholders the option of settling redemptions on an intra-day basis. Penny rounding alone, as a means for a fund to maintain a stable NAV, would not support the continued provision of intra-day settlement in fund shares, even though a fund would, in almost all circumstances, otherwise continue to be eligible to transact at a $1.00 share price.

The rationale for the proposal put forward in the Release does not adequately support, or provide a valid basis for, the prohibition of amortized cost valuation by stable NAV funds. The stated justification for the elimination is that funds will already be valuing their securities using market factors on a daily basis due to new website disclosure requirements, which will require a fund to post its market-based net asset value as of the end of the previous business day. It is correct that the cost of valuing portfolio securities would be borne by funds under the new website disclosure requirement and that some money market funds are already pricing their portfolios using market factors on a daily basis. The rationale of the Release fails, however, to account for the incremental time necessary to obtain market-based valuations and the associated loss of the intra-day settlement feature that enhances the value of money market funds as a cash management tool (which, in turn, could result in significant fund outflows). In addition, the stated justification for eliminating amortized cost fails to provide independent support for the proposal. Rather, the Release attempts to validate the imposition of a costly regulatory change (*i.e.*, elimination of amortized cost valuation) by merely citing to the requirements of another proposed regulation (*i.e.*, daily disclosure of fund market-based NAVs).

v. Tax and accounting implications of Fees and Gates must be adequately addressed.

To function in an effective and efficient manner, a final Fees and Gates rule must be accompanied by appropriate relief and guidance in relevant tax and accounting matters. With respect to the tax implications of Fees, we urge the Commission to cooperate with the IRS and Treasury to implement relief that would permit funds and shareholders to treat distributions paid by stable NAV money market funds following the receipt of liquidity fees as dividends taxable as ordinary income to shareholders, even if a fund does not have sufficient earnings and profits to otherwise support that treatment. Special distributions may be necessary if liquidity fees would otherwise increase a fund's market-based NAV to $1.0050 or more. In addition, it may be

25 *See* generally Dennis R. Beresford, Amortized Cost Is "Fair" for Money Market Funds (Fall 2012), http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Money-Market-Funds_FINAL.layout.pdf.

appropriate to make a Fees-related special distribution on a discretionary basis because the potential for receiving distributions funded by liquidity fees can serve as an inducement for shareholders to refrain from redeeming shares. In the absence of appropriate relief from the IRS, if a fund has insufficient earnings and profits, a portion or all of such distributions would be treated as return of capital, resulting in a reduction in the tax basis of a shareholder's shares. The proposal acknowledges that if such distributions are treated as returns of capital, a fund, its shareholders and intermediaries might become subject to tax lot tracking and gross proceeds reporting obligations[26] that do not currently affect stable NAV funds. We note the Commission staff's assertion that it is unable to quantify the associated tax-related and operational costs due to the unpredictability of such distributions.[27] We believe that regardless of the actual frequency of such distributions, without appropriate relief from the Treasury and the IRS, there would be at minimum very significant one-time costs that funds and intermediaries would have to incur to implement new tracking, payment and reporting of tax positions.

With respect to the floating NAV proposal, the Commission indicated its understanding that the Treasury and the IRS are considering relief in forms and guidance regarding tax reporting by funds and shareholders.[28] And the IRS has published a proposed revenue procedure that would provide limited relief on certain wash sales by shareholders in floating NAV money market funds. With respect to Fees and Gates, the Release notes the creation of tax-related tracking, payment and reporting obligations that would result from the proposal. Unlike the floating NAV proposal, there is, however, no indication that the Treasury and the IRS would consider any form of appropriate relief. We see no reason why the Treasury and the IRS could provide significant tax relief in one area of potential money market fund regulation but not another. Final tax-relief from the Treasury and the IRS should be based on the Commission's final regulatory action as the primary regulator of money market funds.

With respect to accounting matters, the Commission should provide affirmative guidance similar to statements provided in the discussion of the floating NAV alternative that the adoption of the Fees and Gates Proposal alone would not preclude shareholders from classifying their investments in money market funds as cash equivalents. This conclusion may be thought implicit in the continued operation of subject funds as stable NAV funds under most circumstances. We believe, however, that in the absence of Commission guidance, questions regarding the ability for shareholders to treat shares in a fund subject to Fees and Gates as cash equivalents on balance sheets could arise, and if not clearly resolved, the resulting ambiguity could undermine the goal of preserving one of the key benefits of money market funds. These uncertainties can and should be avoided with appropriate Commission guidance.

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[26] *See* 26 U.S.C. § 6045.

[27] *See* Release at 207-208.

[28] *See* Release at 117.

c. Combination of Variable NAV with Fees and Gates

Early in the Release, the Commission states that each alternative proposal seeks to preserve the ability of money market funds to function as an effective and efficient cash management tool for investors. As discussed above, imposing standalone Fees and Gates would generally meet this goal. In contrast, a variable NAV requirement would largely frustrate it—limiting the utility of prime institutional money market funds for many shareholders and imposing burdens and costs on the financial system and various market participants. We cannot say that a variable NAV requirement for prime institutional money market funds will alone *entirely* destroy such funds. We strongly believe, however, that the combination of a variable NAV and Fees and Gates for prime institutional funds will lead nearly all investors to choose other options—further exacerbating the costs associated with a massive migration of assets to government money market funds and riskier and less-regulated alternatives.

We have had extensive discussions with our clients and distribution channel partners about the Proposals, and they universally view a combination as the worst possible option. In addition, nearly all have stated that they would discontinue investments in prime institutional money market funds if they were subject to both a variable NAV and Fees and Gates. This stands to reason. Though we support Fees and Gates as the best of the Proposals, our clients have still expressed a significant level of discomfort about these measures, even standing alone, because they naturally do not want to sacrifice value or liquidity. That said, we believe that many clients would remain invested in stable NAV prime funds subject only to these measures due to the funds' other critical features—diversification, exposure to corporate debt and potential to earn slightly higher yields coupled with these funds' ease of use for cash management due to the stable NAV. Remove the stable NAV, and Fees and Gates become a showstopper. Some shareholders can easily turn to ultra-short bond funds, which have investment strategies and risks similar to those of money market funds (not to mention higher yields and a similar susceptibility to runs). Those shareholders prevented from investing in ultra-short bond funds because they are not "cash equivalents" will largely turn to government money market funds for that purpose—resulting in the capacity problems we discussed above.

Quite apart from costs and shareholders' rational decisions, the Commission's own discussion of a possible combination also demonstrates why neither a combination, nor a standalone variable NAV, constitutes sound policy. In its discussion of the combination, the Release states that Fees and Gates may be necessary in addition to a variable NAV because a standalone variable NAV "may not alter money market fund shareholders' incentive to redeem in times of market stress when investors are engaging in flights to quality, liquidity, and transparency and related contagion effects from such high levels of redemptions."[29] In other words, the variable NAV may very well fail in its purpose: preventing runs. This is largely because runs have very little to do with the theoretical problems that the variable NAV is

29 *See* Release at 235.

intended to address—misapprehension of the pricing and risk of money market funds and the incentive to redeem at a $1.00 before a fund re-prices shares. Thus, the Commission has proposed to add a fail-safe measure that undoubtedly will either slow or stop runs (Fees and Gates) to one that may admittedly be ineffective at doing so (variable NAV requirement). We believe that the more sound approach would be to adopt the fail-safe measure alone.

d. Disclosure Proposals

We are generally and conditionally supportive of the Commission's proposed new disclosure rules and amendments that are designed to enhance risk transparency to investors. Money market fund shares are investments and investors are better positioned to recognize the risks of money market funds through transparency into a fund's key risk characteristics and disclosure of relevant information. For example, the proposed daily website disclosure of a stable NAV fund's market-based NAVs would provide investors with transparency into a significant risk metric that will inform their investment decisions. Since April 1, 2013, the Wells Fargo Advantage Money Market Funds have been voluntarily publishing their mark-to-market NAVs on a daily basis on their website. Recognizing the benefits to investors of clearer and more prominent disclosure of the risks associated with money market funds, we offer comments on certain aspects of the disclosure proposals.

i. The proposed requirements to file Form N-MFP on a weekly basis would be unduly onerous.

We oppose the proposed requirement to file certain items of information on Form N-MFP on a weekly basis because we believe that the associated costs and other burdens are excessive and the purported benefits to shareholders are speculative. The proposal would increase the frequency of filing Form N-MFP from the current monthly filing requirement more than three-fold. This increase would be accompanied by the proposed requirements for money market funds to disclose on their websites certain categories of the information (*i.e.*, daily and weekly liquid assets) on a daily basis. Because this information would already be available daily to shareholders accessing a money market fund's website under other proposed regulations, there is no incremental value to shareholders in making the information redundantly available in regulatory filings. In addition, the utility to the Commission staff in monitoring risk related to this information would be limited or redundant because any depression in weekly liquid asset levels triggering the imposition of a Fee or a Gate would be reported in a filing with the Commission on new Form N-CR. The Commission staff would otherwise have access to this information in monthly Form N-MFP filings or on any other day at a money market fund's website. In addition, we oppose the proposed requirements to disclose weekly gross subscriptions and redemptions for each share class on a weekly basis. Flows can fluctuate in wide bands under normal conditions and such normal flows could easily be misinterpreted and potentially increase the risk of a run on a money market fund. Further, it is our experience that there is currently little demand or value in this information to shareholders, and certainly not at any level that would justify the burdens of making weekly filings.

ii. *The Commission should not adopt proposed requirements to disclose detailed information regarding repurchase agreement collateral under amended Form N-MFP because doing so would result in harm to money market funds and their shareholders.*

The Commission proposes to require additional disclosure with respect to the collateral underlying repurchase agreements in Form N-MFP.[30] We strongly oppose this requirement because we believe the information specified in the proposal may be misused in a manner that will ultimately and seriously disadvantage money market fund shareholders and increase systemic risk, while providing information that will carry little to no utility to investors.

The proposal would require that money market funds disclose certain security specific information regarding securities collateralizing repurchase agreements, including CUSIP-level information. Based on discussions of this proposal with six broker-dealers who we view as among the leading participants in the repurchase agreement market ("repo broker-dealers"), we believe that this proposal would effectively result in public disclosure of proprietary trading information about repo broker-dealer inventories of securities and trading positions, and that, in turn, the disclosure of this information could allow competing broker-dealers and other trading counterparties to use this information against repo broker-dealers in trading activities. In anticipation of these potential disadvantages, repo broker-dealers would have the incentive to, and, in our view, likely would, seek to protect themselves by allocating repurchase agreement collateral in priority to counterparties who are not required to publicly disclose proprietary information before allocating collateral, if at all, to money market funds. The repurchase agreement market has been contracting and, even prior to the proposal, had been expected to continue to do so. Since money market funds might lose all access to the repurchase agreement market as a result of the proposed Form N-MFP amendments, money market funds that are currently utilizing repurchase agreements in order to meet their daily and weekly liquid asset requirements might instead be forced to turn to other types of assets. In doing so, money market funds could be expected to take on additional risks relative to repurchase agreements, either in the form of additional duration (should, for example, money market funds choose to purchase U.S. Treasury securities or agency discount notes), or in the form of credit risk (should, for example, money market funds choose to purchase commercial paper or use bank deposits), thereby increasing systemic risk and disadvantaging money market fund shareholders. Moreover, these potential alternative markets are also limited in size and could not absorb an influx of approximately $450 billion,[31] at least not without resulting in a significant reduction in yields, quite possibly into negative territory.

[30] *See* Release at note 787.

[31] As of June 30, 2013 money market funds held a total of approximately $450 billion in repurchase agreements according to Crane Data.

The proposed CUSIP-level disclosure of repurchase agreement collateral would, in our estimation, prove to be of limited worth to money market fund shareholders, who may be ill-equipped to use this granular information to gain meaningful insight into the nature of the securities, or to aggregate this information in a way that would allow them to assess the potential risks to a fund posed by these securities in relation to the repurchase agreement that they collateralize.

Instead we propose that money market funds report statistics, including average margin levels, on their repurchase agreements in substantially the same form[32] and with the same frequency[33] as the current reporting of tri-party repurchase agreements by the Federal Reserve Bank of New York on its website.[34]

The categories of information on repurchase agreements that we propose money market funds report would be much more useful to money market fund investors and regulators than CUSIP-level data on collateral because our proposed categories would allow for regular and efficient comparison of important current and historical risk factors regarding repurchase agreements between different funds and to the market as a whole on a standardized basis. At the same time, it would protect the counterparties' proprietary trading information and further ensure that money market funds retain access to the repurchase agreement market.

iii. Money market funds should not be required to disclose acquisition dates or costs to the public because doing so would result in harm to funds and their shareholders.

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32 We propose that money funds report repurchase agreements that are collateralized by money market instruments that are themselves Eligible Securities under Rule 2a-7 as a separate line item and not included in the "Other" category, and the Federal Reserve Bank of New York make parallel changes. These money market instruments possess substantially different risk characteristics than the categories of "CDO, International,… Municipality Debt, and Whole Loans" which are also included in the "Other" category.

33 The Federal Reserve Bank of New York's tri-party repo data "is obtained from the close of business on the seventh business day of each month, which was selected because it is judged to be a typical business date. Days such as the first or last business day of the month, or a mortgage-backed securities settlement day, could introduce distortions into the data." Note 3 of "Explanatory Notes to the Summary Statistics for the U.S. Tri-Party Repo Market" available at http://www.newyorkfed.org/tripartyrepo/pdf/explanatory_notes.pdf. In order for the data reported to the Commission to be comparable and have greater utility, money funds would have to report as of the same date. As a result, this data might be better reported on the funds' websites rather than on Form N-MFP.

34 *See* http://www.newyorkfed.org/banking/tpr_infr_reform_data.html.

Under the Proposals, money market funds would be required to disclose on Form N-MFP "…the purchase date (and), the yield at purchase… and the purchase price" for each portfolio security.[35] We believe that such disclosure provides no meaningful information to shareholders and prospective shareholders regarding the risks of a money market fund. Instead, these proposed amendments would require disclosure of proprietary trade information that can and would be used to disadvantage money market funds and their shareholders. For example, based on our observations of actual market behavior, issuers of commercial paper would use this type of information to determine the price at which money market funds purchase their commercial paper from dealers. Upon learning that money market funds purchased the issuer's commercial paper from the dealer at a discount to posted issuance levels (as is customary), an issuer can, and we believe would, compel the dealer to discontinue the practice of discounting the issuer's commercial paper to funds. As a result, money market funds would then be required to pay a higher price for their commercial paper than they otherwise would have if this proprietary trade information had not been required to be disclosed on amended Form N-MFP. We support efforts to increase transparency and aid in price discovery in the money markets, but oppose disclosures that would enable money market fund competitors and counterparties to link this trade information to funds to the detriment of fund shareholders. Instead, we would suggest that price discovery might be enhanced through other methods, such as increasing the categories of securities reported through the Financial Industry Regulatory Authority's Trade Reporting and Compliance Engine® (TRACE®) system. Trades could be reported in broad maturity categories, such as those used by the Board of Governors of the Federal Reserve System in its commercial paper market statistics.[36] Such broad price reporting would aid in price discovery and transparency while, at the same time, protecting shareholders from the potential harm resulting from the release of money market funds' proprietary trade information.

iv. If disclosure regarding past sponsor support is required, money market funds should disclose only past sponsor support that was provided to avoid an imminent deviation of 50 basis points or more in the fund's shadow NAV.

We believe that if the proposed requirement to disclose a sponsor's past provision of financial support in the last ten years is adopted, it should be limited to instances in which the support was necessary to avoid an imminent "break-the-buck" scenario. To determine if a past provision of financial support meets this standard, the Commission could, for example, prescribe a threshold of a money market fund's market-based NAV (*e.g.*, $0.9960) at or below which the past support was provided. Sponsors have elected to provide financial support for reasons that may be entirely unrelated to a risk of a money market fund being unable to maintain a stable NAV. A sponsor may have, for example, provided financial support in the past to support a money market fund's current credit rating even though the fund was not by any reasonable

[35] Release at 382.

[36] *See* http://www.federalreserve.gov/releases/cp/volumestats.htm.

measure at risk of experiencing a deviation in its market-based NAV of more than 50 basis points.

We are concerned that investors may misinterpret disclosure about past support as an indication that sponsors will continue to support money market funds in the future. The risk that investors may misconstrue the implications of this disclosure is exacerbated when the number of reported instances may not be indicative of the actual instances of acute distress in a money market fund's market-based NAV. In this sense, unnecessary over-reporting of past events of sponsor support arguably would undermine the efficacy of the proposed new required disclosures in prospectus and sales material that warns investors to not expect that a sponsor will provide financial support at any time.[37] These two proposed disclosure requirements will send investors mixed and conflicting messages, and we believe that the warning that investors should not expect support is the appropriate disclosure requirement. If disclosure of past sponsor financial support is ultimately required, we believe that the scope of disclosure should be limited to the circumstances described above.

v. Proposed amendments to Form PF should not apply to unregistered liquidity vehicles owned exclusively by registered funds and complying with Rule 12d1-1 under the 1940 Act.

We support the Commission's effort to track information about less-regulated vehicles to which assets may flow as a result of the adoption of revised money market fund regulation as part of its larger oversight of systemic risk in the short-term markets. The proposed amendments to Form PF would require large liquidity advisers to file substantially all of the same information with respect to their liquidity funds holdings as required for funds filing on Form N-MFP. We believe the proposed reporting requirements of Form PF should not, however, apply to any unregistered liquidity fund that operates an underlying vehicle solely for registered funds in compliance with Rule 12d1-1 under the 1940 Act. Rule 12d1-1 conditions the ability for registered funds to invest in an underlying unregistered liquidity fund in excess of the limits specified in Section 12(d)(1) of the 1940 Act on, among other things, the operation of the liquidity fund in compliance with Rule 2a-7. Such underlying liquidity vehicles could not be a target for the redirection of potential outflows from prime money market funds triggered by regulatory changes because their only investors are funds registered under the 1940 Act. Moreover, they do not contribute to a potential increase in systemic risk because they are operated in compliance with Rule 2a-7. The burdens associated with complying with the proposed amendments to Form PF are substantial and the potential regulatory benefits associated with obtaining additional information about portfolios owned entirely by registered funds and complying with Rule 2a-7 are negligible and, in any event, do not warrant the imposition of those burdens.

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[37] *See* Release at 210-212.

vi. Regulatory efforts to increase issuer transparency should be focused directly on underlying issuers whose securities are subject to guarantees and not indirectly through money market funds as investors.

The Release requests comment on whether the Commission should require money market funds to obtain financial data on the underlying issuers whose securities are subject to guarantees.[38] Requiring disclosure of an underlying issuer's financial data to the investment community is a reasonable regulatory objective; however any rules mandating the publication of this information, including the content and frequency of issuer financial disclosures, should be handled outside of this rulemaking. Money market funds are able to obtain financial data that is available more generally to investors. But it would be unreasonable, and ultimately detrimental to competition and the vitality of the short-term money markets, to adopt regulation that would have the effect of selectively prohibiting money market funds as a segment of the broader investment community from investing in certain issuers. Money market funds could, for example, be unreasonably precluded from making an investment arising from a failure to obtain certain financial data sets for an issuer (which may not be necessary to reach an investment decision) or simply due to an issuer's untimely production of financial data that it does not normally produce. More significantly, issuers would circumvent requests for additional financial information by simply issuing securities to non-fund investors who are not burdened with the potential requirement. Instead, to the extent that regulators see existing financial disclosure as inadequate, those inadequacies should be addressed in a separate rulemaking that applies directly to the relevant underlying issuers.

vii. The final rule should incorporate important adjustments to proposed security categorizations and other technical reporting items.

The proposal would require a money market fund to disclose on its website and in filings on Form N-MFP information about certain categories of securities in which a fund invests.[39] We believe the following changes to the proposed amendments would increase the accuracy of how securities are categorized. First, the proposed security category of "Collateralized Commercial Paper" should not serve as a stand-alone category, but instead should remain subsumed as a sub-segment of the "Asset Backed Commercial Paper" category, consistent with the Federal Reserve Bank's calculation for measuring the size of the asset-backed commercial paper market. Second, the proposed category of "Structured Investment Vehicle Note" should not be established as a stand-alone category in light of its limited informational value. Third, the following new categories of securities should be added in the final rule: (i) "Multi-Lateral Agency Debt", which would join "Non U.S. Sovereign Debt" and "Non U.S. Sub-Sovereign Debt" as new categories among the broader types of government and government-related-entity investments reported; and (ii) "Non-negotiable Time Deposits", which would be among the broader types of bank

[38] *See* Release at 465.

[39] *See* Release at note 779 and page 608.

investments reported. Fourth, the proposed list of security categories applicable to collateral underlying repurchase agreements in amended Form N-MFP[40] should be reconfigured to require reporting based on the nine categories of asset groups[41] currently reported for tri-party repurchase agreements by the Federal Reserve Bank of New York on its website.

Additionally, the proposal would require a money market fund to disclose on Form N-MFP, where applicable, the period remaining until the principal amount of a security may be recovered through a demand feature and whether a security demand feature is conditional.[42] This proposal would not, in our view, provide information that substantially improves the ability to evaluate and monitor a security's credit and default risk. We believe that for this type of security the amended form should instead require disclosure of a maturity date deemed to be the earlier of the effective demand date and the final maturity date. Finally, to facilitate more consistent and meaningful reporting, we suggest that the final amended form employ standardized naming conventions or Legal Entity Identifier codes with respect to securities without CUSIP numbers.

viii. Third party publications of a money market fund's yield should be required to be accompanied by the fund's weighted average life with equal prominence.

Since the 2010 Amendments became effective, all money market funds have been required to calculate the weighted average life of their portfolios without regard to the maturity shortening provisions of the rule on a daily basis. A fund's yield and its weighted average life are often inter-related, and a money market fund's weighted average life serves as an important measure of risk. Nonetheless, certain third-party information providers regularly disseminate information about a money market fund's yield without providing information about the fund's weighted average life. This type of presentation is, in our view, unbalanced and incomplete, and arguably can contribute to the growth of money market funds with riskier portfolios. Although this type of publication would not be considered marketing material subject to applicable Commission rules governing fund advertising, the Commission possesses broad remedial authority with respect to any practice in connection with the purchase or sale of a money market fund security. Accordingly, to ensure that investors are informed of this important risk measure, we suggest that the Commission's staff provide guidance that would require a third party's publication of a money market fund's yield to be accompanied by the fund's weighted average life with equal prominence.

e. Diversification Proposals

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40 *See* proposed Item E.63(g) of Form N-MFP in Release at 694.

41 *See* Note 8 of "Explanatory Notes to the Summary Statistics for the U.S. Tri-Party Repo Market" available at http://www.newyorkfed.org/tripartyrepo/pdf/explanatory_notes.pdf.

42 *See* proposed Item C.14.e-f of Form N-MFP in Release at 671.

We generally support the Commission's proposals to further tighten money market fund portfolio diversification requirements; though we believe that to limit increasing risk of a common shock across money market funds, the Commission must end Rule 2a-7's reliance on Nationally Recognized Statistical Rating Organization ("NRSRO") ratings for purposes of defining securities eligible for money market fund investment. Defining eligible securities in terms of NRSRO ratings not only perpetuates reliance on a discredited and demonstrably unreliable means of determining credit quality, but it unnecessarily limits the diversity of issuers and guarantors of potential money market fund portfolio securities. This is problematic for two reasons: first, it makes it more likely that most or all money market funds will have exposure to the same issuers and guarantors, meaning that a default by one of these issuers or guarantors could harm money market funds broadly. Secondly, in light of the Commission's proposals to tighten diversification requirements, it will create significant capacity issues for money market funds other than government money market funds. Finally, no matter the policy reasons for or against NRSRO ratings, the Commission is arguably required to remove references to NRSRO ratings from Rule 2a-7 under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[43]

Though we generally support the proposed diversification requirements, we suggest some minor modifications, beginning with the proposal to require funds to treat the sponsors of special purpose entities issuing asset backed securities ("ABS") as guarantors of the ABS subject to Rule 2a-7's diversification limitations applicable to guarantors and demand feature providers. We agree that when a fund manager relies on a sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to evaluate the creditworthiness and liquidity of ABS, the manager should be required to count the sponsor as a guarantor for purposes of the 10% guarantor concentration limit. Many ABS, however, carry contractual guarantees of support by third parties. For those ABS, a fund manager often looks to financial strength and creditworthiness of the third-party guarantor to evaluate the creditworthiness and/or liquidity of the ABS. Therefore, for those ABS, we believe that the Commission should require a fund to count the contractual third-party guarantor, rather than the sponsor, for purposes of the guarantor concentration limit. Additionally, to the extent that a manager relies upon the credit of a guarantor for ABS, it should not be further required to identify and meet diversification requirements for any "ten percent obligor."[44]

We partly support the Commission's proposal to eliminate the so-called "25% basket" under which up to 25% of the value of securities held in a fund's portfolio may be subject to

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43 *See* Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)].

44 *See* Rule 2a-7(c)(4)(ii)(D)(1)(i) (defining "ten percent obligor").

guarantees or demand features from a single non-controlled institution. For taxable money market funds, we believe that this proposal will prove workable because a sufficient supply of eligible securities with diverse guarantors exists. This is not the case for tax-free/municipal money funds. The availability of guarantor support for municipal securities has substantially declined, and the market share amongst the top 10 support providers stood at nearly 77% at the end of 2012.[45] Thus, we fear that removing the 25% basket will result in significant capacity issues for tax-free/municipal money market funds, in a market that is already contracting. We also believe that to the extent that a manager needs to invest up to 25% in municipal securities with the same guarantor, the manager will have every incentive to choose one of the most reliable and credit-worthy guarantors for that purpose. In fact, with a constrained supply of securities with diverse guarantors, the 25% basket may actually allow a manager to reduce risk by avoiding or reducing exposure to the relatively weakest guarantors.

Finally, we support the Commission's proposal to require aggregation of certain affiliated issuers for purposes of Rule 2a-7's 5% issuer diversification limit. We believe that this proposal correctly accounts for the fact aggregate individual exposures to certain affiliated issuers may create concentration risk equivalent to the same level of exposure to a single issuer. We also support the proposed standard for determining affiliation—i.e., one issuer is affiliated with another if that issuer controls the other, is controlled by it, or is under common control with it. We also support the Commission's decision <u>not</u> to require money market funds to treat as affiliates all entities that must be consolidated on a balance sheet. As described in the Release, such a standard would require a money market fund to treat variable interest entities ("VIEs") as affiliates of their sponsors. VIEs are frequently set up as thinly capitalized limited purpose vehicles to facilitate securitization or other similar specialized activities, isolating assets and issuing non-recourse debt. Often holders of equity shares of a VIE may not have a significant investment risk, may lack substantive voting rights, and may not be entitled to residual returns of the entity. As such, we do not believe that exposure both to a sponsor and its VIE creates cumulative concentration risk, such that the separate exposures should be aggregated for purposes of the issuer diversification limit.

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45 Based on statistics published by *The Bond Buyer*.

We appreciate the opportunity to comment on the Proposals. We view them as a substantial step forward from the FSOC's proposed recommendations issued in 2012. As such, we are pleased to support certain of the Proposals that we believe constitute sensible and cost-effective means to further strengthen money market funds and ensure that they do not pose systemic risk. These measures include standalone Fees and Gates, enhanced diversification requirements, and certain additional disclosure requirements. We continue to oppose a variable NAV requirement for any money market funds because we do not believe that it will help to prevent runs, but will make money markets much less useful to shareholders and lead to a migration of assets to alternatives, presenting its own set of problems. We also strongly oppose the potential combination of a variable NAV with liquidity Fees and Gates because we think it will render institutional prime money funds unusable for nearly all investors. Ultimately, however, we appreciate the work that the Commission has done in formulating the Proposals, and we look forward to continuing a constructive dialogue with the Commission to help reduce any risks of destabilizing runs on money market funds without removing key features that have made them such a popular investment options and critical source of credit to businesses, states, municipalities and other local governments.

Very truly yours,

Karla M. Rabusch

Karla M. Rabusch
President
Wells Fargo Funds Management, LLC