American Bankers Association
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BY ELECTRONIC MAIL

September 17, 2013

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090.

Re: Proposal for Money Market Fund Reform, File Number S7-03-13; 78 *Federal Register* 44806 (July 24, 2013).

Dear Ms. Murphy:

The American Bankers Association[1] (ABA) appreciates the opportunity to comment on the proposal of the Securities and Exchange Commission (SEC or Commission) for additional regulation of money market mutual funds (MMF). The Commission has proposed two alternatives to address the perceived susceptibility of MMFs to heavy redemptions, as well as intending to improve the ability of MMFs to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving the benefits of money market funds.

The first alternative (Alternative One) would require money market funds to sell and redeem shares at a "floating" net asset value per share (NAV). The second alternative (Alternative Two) would require MMFs to impose a liquidity fee if a fund's liquidity levels fell below a specified threshold and would permit the funds to suspend redemptions temporarily, i.e., "gate" the fund, under the same circumstances.

[1] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees.

The proposal also contemplates a combination of Alternatives One and Two. Finally, the proposal would require increased diversification of MMF portfolios, enhanced stress testing, and increased transparency by significantly expanding disclosure and reporting to the SEC and to investors.

ABA member institutions interact with MMFs in numerous ways, including as investors on behalf of bank customers, as sponsors, and issuers of certificates of deposit and commercial paper in which MMFs invest. Over 1500 banking institutions, savings associations, and trust companies (collectively, banks) use MMFs as a source for investments on behalf of their institutional and personal trust accounts. As of December 31, 2012, these banks through their trust departments had invested over $121 billion in MMFs on behalf of fiduciary accounts.[2] In addition, many of our member institutions that offer corporate trust and securities processing services use MMFs to hold cash in connection with the issuance of both municipal and corporate bonds. Many of our members also use MMFs as investments for sweep accounts. Moreover, a number of our members sponsor and advise MMFs. Because of these many ways that banks and trust companies interact with MMFs, our members are keenly interested in the Commission's proposal.

Summary Conclusion

MMFs are highly valued by our members for cash management and other investment purposes. The unique characteristics of MMFs provide efficient and cost-effective ways to invest in diverse issuers and benefit from the fund manager's investment expertise and credit risk analysis. For these reasons, our members who invest in MMFs on behalf of clients support preserving the stable NAV for *all* MMFs. Similarly, these same members, particularly when acting in a fiduciary capacity, likely would significantly reduce or even avoid investment in a stable value MMF with fees and gates as proposed in Alternative Two.

Unfortunately, neither Alternative One nor Alternative Two achieves the stated goal of the Commission to address heavy redemptions in MMFs. As discussed below, we believe that certain investors would always redeem their shares as a fund became distressed, regardless of the cost involved, the proposed steps doing little to avoid such reactions. Indeed, the far more likely

[2] FDIC Quarterly Banking Profile, Fourth Quarter 2012, Table VIII-A.

scenario resulting from implementation of the proposals is that these investors simply would not invest in MMFs subject to either Alternative One or Two, because the product would no longer have the attributes they value so highly.

ABA believes that the reforms adopted by the SEC in 2010 have already significantly reduced the risk in MMF portfolios and strengthened the resilience of MMFs to withstand stressful scenarios. We, therefore, urge the Commission not to take precipitous actions that may destroy the usefulness of this product, but rather to continue to evaluate the demonstrated effectiveness of the existing reforms. Ultimately, we believe the Commission can achieve both of its goals through the enhanced disclosure contemplated in the proposal. Such additional disclosure would provide investors more information and also influence MMF managers to yet more disciplined and rigorous credit risk analysis.

Summary of the Proposal

1. Floating Net Asset Value (FNAV) Alternative

Alternative One would require institutional prime funds to "float" their net asset value (FNAV proposal). This proposal is intended to make transparent the changes in the market values of the fund's portfolio securities, which, so the theory goes, would ameliorate the panic incentive of surprised investors to redeem shares in times of fund and market stress. To support this goal, the proposal requires enhanced disclosures to investors in the form of a lengthy bulleted statement in any prospectus or marketing material emphasizing the fluctuating share price and the possible loss of principal. The disclosures also would state that sponsors have no legal obligation to provide financial support to an MMF.

The requirement to float the NAV would not apply to government or retail prime MMFs. Although such funds would no longer be permitted to use amortized cost accounting, they would be permitted to continue to use the penny rounding method of pricing to maintain a stable price, *i.e.*, $1.00/share NAV. Retail prime funds are MMFs (including municipal MMFs) that limit their daily redemptions per shareholder of record to $1 million. Recognizing that many individuals invest in MMFs through intermediaries in omnibus accounts, the Commission has proposed that retail prime MMFs may disregard the $1 million redemption limit at the level of the omnibus account holder so long as the fund can reasonably conclude that the limit will be applied at the individual beneficial owner level.

2. Fees and Gates Alternative

Alternative Two would impose a mandatory liquidity fee and optional gates on prime MMF redemptions if the fund's weekly liquidity level fell to one-half of the regulatory requirement.[3] This requirement is intended to impose on investors redeeming shares during a time of stress at least some of the costs to the fund of providing investors that liquidity. The fees and gates alternative would permit the continued use of stable NAVs for all prime MMFs. Although government MMFs would not be subject to this alternative, such funds could choose to adopt the fees and gates requirements, so long as they were disclosed in the fund's prospectus.

3. Enhanced Disclosure Requirements

The proposal would require MMFs to provide investors with additional information so that investors may better evaluate the risks of investing in a particular fund. Specifically, the amendments would require enhanced registration statement and website disclosure with respect to: (1) any type of financial support provided to a money market fund by the fund's sponsor or an affiliated person of the fund; (2) the fund's daily and weekly liquidity levels; and (3) for all funds, the fund's daily current NAV per share, rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price.

Discussion

The Commission's goal in proposing these reforms is to reduce the susceptibility of MMFs to heavy redemptions in times of stress, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving the benefits of money market funds for the investors who rely upon them. ABA believes that the FNAV alternative is highly unlikely to deter such redemptions by investors; nor will it address the issues of potential contagion. In addition, fiduciary, individual, and business investors would likely turn to alternative products to meet their goals of preserving principal and liquidity and

[3] Specifically, if a prime MMF's level of weekly liquid assets falls below 15 percent of total assets, the fund would have to impose a two percent liquidity fee on each redemption unless the board determines that either a lower fee or no fee would be in the best interest of the fund.

diversification, as the proposals would undermine the ability of MMFs to serve these investor goals. Similarly, although the fees and gates alternative could potentially mitigate contagion to a minor degree in some cases, we believe it would be unlikely to do so without sacrificing these investors' needs. We do believe, however, that the Commission's goals are advanced through the proposal's requirements for robust disclosure.

Because the effectiveness of either of the proposed alternatives or a combination thereof turns on investor behavior, ABA strongly urges the Commission to give great weight to the comments of investors who, in the end, will have the final say on whether MMFs remain a viable product to meet their needs or instead will lead to investor behavior not intended by the Commission.

1. FNAV Alternative Will Not Serve Investor Needs

ABA believes that the FNAV alternative will not achieve the Commission's goals of addressing heavy redemption activity while preserving the benefits of MMFs. To the contrary, we believe prime MMFs with FNAV would very likely cease be a viable product for our members when investing on behalf of their fiduciary accounts and providing other consumer products, such as sweep accounts.

We agree with the Commission that many investors use money market funds for principal preservation and as a cash management tool, and, consequently, these funds attract investors who are unable or unwilling to tolerate even small losses.[4] We believe such investors have made a conscious decision to trade the possibility of higher returns for relative safety and liquidity, diversification, and ease of use. This last feature is a key attribute for investors, particularly with respect to daily redemptions which are facilitated by a stable NAV. In addition, although sponsors will bear the greatest costs of the FNAV proposal, investors as well as banks would also incur significant system and other costs.

Given the risk-averse nature of many MMF investors, we disagree with the Commission's conclusion that investors in FNAV funds may be less likely to redeem when a fund is under

[4] Proposing Release at 26.

stress because they have become accustomed to fluctuating share prices.[5] As the Commission itself stated "[w]e recognize that a floating NAV may not eliminate investors' incentives to redeem fund shares, particularly when financial markets are under stress and investors are engaging in flights to quality, liquidity, or transparency."[6]

Fiduciary Investors

As mentioned above, ABA represents many banks and trust companies that invest billions of dollars in MMFs on behalf of fiduciary accounts. Bank fiduciaries have invested in these funds from their advent decades ago, because MMFs offer an efficient way to invest in an income-producing security with a stable value share price. Any change to these unique characteristics may make MMFs unsuitable for many bank fiduciaries by no longer providing a relatively low-risk investment that preserves principal, not infrequently an investment objective for fiduciary accounts such as trusts and estates.

Under the laws governing national and state chartered institutions, bank fiduciaries have a duty to make assets within a fiduciary account productive, especially when there are current income beneficiaries. This duty is a corollary of the duty to be prudent and to administer the trust according to its terms.[7] In particular, when an account has significant cash awaiting investment or distribution, the fiduciary must make it productive at a rate of return consistent with applicable law. The Office of the Comptroller of Currency Regulation 9.10 clearly states the applicable expectations for national banks:

> 9.10 Fiduciary funds awaiting investment or distribution.
>
> (a) In general. With respect to a fiduciary account for which a national bank has investment discretion or discretion over distributions, the bank may not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the account and consistent with applicable law. With respect to a fiduciary account for which a national bank has

[5] As the Commission states, "[t]hese overarching considerations may create incentives for money market investors to redeem and would be expected to persist, even if valuation and pricing incentives were addressed. The desire to avoid loss may cause investors to redeem from money market funds in times of stress in a 'flight to quality'." *Id.*

[6] Proposing Release at 56.

[7] OCC Regulation 9.10; Uniform Trust Code Section 804; Uniform Prudent Investor Act.

investment discretion, the bank shall obtain for funds awaiting investment or distribution a rate of return that is consistent with applicable law.

National banks and many state banks that follow the OCC requirements often will invest cash proceeds from sales of securities, real estate, or other account assets in MMFs. Such investments make the assets productive by achieving some rate of return consistent with applicable law, while preserving principal.

If certain prime MMFs were forced to use a floating NAV, we understand that bank fiduciaries would be likely to switch their investments to other alternatives, such as government MMFs that are not subject to the proposed amendments. In other words, the floating NAV prime funds would not be a viable option for many fiduciaries. We do not understand the Commission's goal to be to drive investment from private sector instruments to government securities, yet that would be one likely outcome of the FNAV proposal.

Retail Prime Fund Exception Is Not a Feasible Alternative

Understanding that "retail" investors do not present significant redemption risk and would prefer to invest in stable NAV prime funds, the Commission provides an exception from the FNAV requirement for those prime funds that limit the daily redemptions to $1 million per investor. As mentioned above, fiduciaries, such as trustees and executors, often invest cash proceeds from the sale of real estate, securities, or other assets in MMFs, because fiduciary duties demand that the all assets be made productive, even while waiting further investment. It is not uncommon, even in small trusts and estates, for an investment in a MMF to surpass the $1 million threshold. However, when the time comes for distributions to estate beneficiaries or to reinvest the proceeds in other real estate or securities, the fiduciary will not want to be limited in its ability to redeem the entire interest in the MMF on a single day. Because of this concern about the potential limitation on redemptions, fiduciaries would again be very likely to switch their investments to other alternatives, such as government MMFs.

The Commission acknowledges that some investors, such as bank trust departments, may invest a number of accounts in MMFs through an omnibus account. Therefore, the MMF may not know whether an omnibus account is redeeming more than $1 million on behalf of one or many investors. To accommodate this situation, the proposal allows omnibus account redemptions of more than $1 million a day as long as the MMF can reasonably conclude that the limit will be applied at the account level. According to many of our bank fiduciaries, including those that have significant trust departments, it would be prohibitively expensive and time-consuming for the bank to determine whether an individual account within the omnibus account has breached the $1 million threshold. Such a determination would very likely require additional systems or modifications to existing systems. Due to these additional costs, fiduciaries would be very likely to switch investments to government MMFs.

De Minimis Wash Sales Won't Work

Currently, because MMF share prices are maintained at a stable value, sales do not generate capital gains or losses for tax purposes. However, as the Commission acknowledges in the release, a FNAV MMF would present difficulties for the investor as a taxpayer, as well as to the fund, due to the application of the "wash sales" rules under the Internal Revenue Code (IRC). The wash sales rules apply when an investor sells a security at a capital loss and within thirty days before or after the sale, the investor buys substantially identical securities. In this circumstance, the investor may not take a loss for that sale, but must add the loss to the basis of the new securities purchased and wait until they are sold to recognize any gain or loss. As the proposal states: "Because many money market fund investors automatically reinvest their dividends (which are often paid monthly), virtually all redemptions by these investors would be within 30 days of a dividend reinvestment (i.e., purchase)."[8] In other words, it is extremely likely that millions of investors in MMFs would trip the wash sales rules through no intention of their own if the fund had a floating NAV.

In reaction to the Commission's proposal, the Internal Revenue Service (IRS) issued Notice 2013-48 with the intention of addressing the problem of wash sales. In the Notice, the IRS would not impose the wash sales rules on any loss which represents not more than one half of one percent (0.5%) of the taxpayer's basis in that share. Unfortunately, this exception to the rule, although intended to provide relief for taxpayers, would impose a great burden on banks when acting as a "broker" under tax laws. Although the investor/taxpayer may not have to worry about managing wash sales for many of these losses, the bank as broker would have to establish new systems to monitor whether any particular loss fell within the de minimis exception. Banks of all sizes that invest as fiduciaries, as well as offer sweep accounts, would have to expend great resources to create such a new tracking system for cost basis reporting purposes. These

[8] Proposing Release at 120.

increased costs will either reduce bank willingness to offer these services, or raise the price of these services to customers, or both.

Accounting Implications

With respect to accounting issues, the SEC asserts that, based on the Commission's Division of Risk, Strategy, and Financial Innovation Staff Study, cash equivalent accounting treatment would remain the same under its FNAV alternative. ABA believes that investors and their legal counsel would not be comfortable in relying on a single sentence in the Proposing Release to determine the accounting treatment. Should MMF shares be treated not as cash equivalents but rather as available-for-sale securities, our members would be required to incur the costs necessary to monitor and record changes in share values as unrealized gains or losses.

Operational Costs

Bank trust departments use specialized accounting systems, including those that are specific to trust accounts, to manage payments and distributions for client accounts that must comport with state and federal laws governing fiduciary accounts. The bank's systems, in turn, interface with the systems of other entities that provide services for client accounts. If a bank were to choose to invest fiduciary cash awaiting investment in an MMF with a floating NAV, those systems would have to be redesigned at significant cost.[9] Such costs, along with costs to monitor compliance with wash sales and accounting issues would disincent investments in FNAV MMFs by bank fiduciaries.

2. The Fees and Gates Alternative May Not Serve Investor Needs

As with our comments under Alternative One, ABA does not believe Alternative Two will reduce the susceptibility of MMFs to heavy redemptions in times of stress. Rather, with increased transparency into fund assets, we believe it likely that redemptions would simply occur earlier, well before the 15 percent threshold is reached, making such opportunistic redemptions more common (since they will affect funds that approach but may never otherwise reach the threshold) and any liquidity challenge felt sooner. However, we do believe that the ability to gate

[9] For a detailed description of the specialized business applications and automated systems that use stable NAV MMFs to hold temporary liquidity balances, *see* Letter from John D. Hawke, Jr., Arnold & Porter, to the Financial Stability Oversight Council (January 25, 2013) on behalf of Federated Investors, providing comments on FSOC's Proposed Recommendations Regarding Money Market Mutual Fund Reform, available at http://www.regulations.gov/#!documentDetail;D=FSOC-2012-0003-0072.

a fund could slow redemptions sufficiently to enable a fund board to assess the situation and take appropriate actions.

While under the fees and gates Alternative, MMFs would be able to retain a stable NAV, such a product may not satisfy investors' needs for liquidity in their portfolios. In particular, for bank trust departments, the purpose of investing in MMFs is to provide a relatively low-risk investment that is highly liquid and can be redeemed at any time for a set price. These unique characteristics of current MMFs give fiduciaries much-needed flexibility to make necessary distributions to beneficiaries or to invest quickly in other assets as those opportunities arise. For example, under the Employee Retirement and Income Security Act of 1974 (ERISA), employee benefit plan fiduciaries must ensure that there is adequate liquidity in the account for participant distributions and other expenses to the plan.[10] Trustees, executors, and other fiduciaries who invest in liquid investments, such as in a MMF, must be able to redeem the investment in full without the possibility of a fee or a gate. If there were restrictions on redemptions or fees imposed on redemptions, the fiduciaries may feel obliged to find alternatives that do not impose such restrictions or potentially cause problems for their overriding fiduciary duties.

In addition, corporate trustees, who require certainty that funds will be available on a given date for payment to bondholders, could not, we believe, accept the risk that the funds may be unavailable. Although the proposal is designed to allow access to funds with the payment of the liquidity fee, their documents do not provide for such fees, which, given the millions of dollars involved, would be substantial.

3. Alternatives to MMFs

If, as we believe, our members would be unwilling to invest in MMFs with a floating NAV or fees or gates, the question becomes what alternative investments would they choose to meet their cash management and liquidity needs? Their first choice we believe would be to move their funds to government funds that did not operate under those strictures. However, if all of the investments in prime MMFs suddenly shifted into government funds, it is certainly possible that there would arise availability issues for those funds (particularly given other regulatory incentives for increased demands for those funds, such as to provide collateral for swaps and to meet new bank capital and liquidity requirements).

[10] ERISA Regulation 29 CFR 2550.404a-1.

While bank-maintained short-term investment funds (STIFs) are often described as similar to MMFs, investments in prime funds could not flow into STIFs, because STIFs are subject to the strictest fiduciary standards relating to participant eligibility and management.

Finally, deposits in commercial banks are often cited as an alternative to MMFs. However, in a time of evolving regulations and substantial regulatory uncertainty, such an inflow of deposits may present significant liquidity and capital concerns, among others, to the depository institution. Current bank supervisory goals envision reducing bank reliance on short-term funding. Moreover, banks would tend to seek to match such short-term deposits to short-term, low yielding assets, the earnings on which would hardly if at all meet the cost of the new capital that the bank would have to hold against this expansion of assets.

4. Enhanced Disclosure Would Achieve the Commission's Goals

ABA strongly believes that the Commission could promote its goals of addressing heavy redemptions while preserving the benefits of MMFs through its proposals for enhanced disclosure. The Commission has proposed to require daily disclosure on an MMF's website of the fund's shadow NAV and daily and weekly liquidity levels, as well as any material events filed on Form N-CR. In addition, the proposal would require more timely and significant reporting concerning an MMF's portfolio.

Such disclosures, we believe, would exert a discipline on fund advisers to manage assets so conservatively as to avoid raising concerns among investors about the credit quality of fund investments that could lead to heavy redemptions. With the certain knowledge that investors are monitoring the shadow NAV, portfolio assets and liquidity levels, no fund board would want to risk approaching the threshold for imposition of a liquidity fee. In addition, knowing that any form of sponsor support would be required to be disclosed within 24 hours, fund managers would likely do everything they could to avoid the need for sponsor support. We believe that such conservative behavior is already occurring and will continue as additional information becomes available to investors on a daily and monthly basis.

The effect of disclosure and the resultant self-discipline will be, we believe, effective to avoid heavy redemptions and, at the same time, will preserve the benefit of MMFs for the many bank investors that rely on this product for investment of client cash.

Conclusion

We appreciate this opportunity to comment on the Commission's proposal. As mentioned above, MMFs are highly valued by our members when providing fiduciary and cash management services. ABA believes that the reforms adopted by the SEC in 2010 have significantly reduced the risk in MMF portfolios and strengthened their resilience to withstand stressful scenarios. We, therefore, urge the Commission to evaluate further the effectiveness of those reforms and consider the enhanced disclosure in the proposal rather than changing the unique characteristics of MMFs that customers value. If you have any questions about the foregoing, please do not hesitate to contact the undersigned or Cristeena Naser at cnaser@aba.com or (202) 663-5332.

Sincerely,

Cecelia A. Calaby
Senior Vice President