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

RE: Money Market Fund Reforms (Release No. IC-34441; File No. S7-22-21)

Dear Ms. Countryman:

Americans for Tax Reform ("ATR") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") *Money Market Fund Reforms* rulemaking ("the Proposal") that proposes amendments to rules under the Investment Company Act of 1940.

ATR is a nonprofit, 501(c)(4) taxpayer advocacy group that opposes all tax increases and supports limited government regulation.

Initial Thoughts

ATR is concerned that certain regulatory mandates imbedded in the Proposal could further weaken money market fund ("MMF") returns and shift capital toward other investment options. Certain provisions, such as swing pricing, are overly burdensome and would impede MMFs' business operations.

As a result of the SEC's interventionist 2014 reforms to MMFs, certain fund managers stopped offering institutional prime and institutional tax-exempt funds as investment options. Unfortunately, under the SEC's new reforms, certain amendments and potential alternatives will increase the cost of investing in MMFs and discourage both institutional and retail investors from using MMFs. The loss of investment in MMFs will further reduce financing for companies who seek a large part of their debt financing through commercial paper and other short-term corporate securities.

However, the Proposal's elimination of the tie between the liquidity thresholds and redemption fees and gates are a positive move that will help prevent future runs on MMFs.

Money Market Funds

MMFs offer short term liquidity and stability for investors. The notion that the unique events of 2008 and 2020 are evidence of continuous market instability is inaccurate and falls under the misconception that MMFs are unsafe investments. In fact, the Federal Reserve has previously stated that MMFs are more stable than bank deposits.

Currently there are approximately [$4.5 trillion] in MMF assets. Retail investors in MMFs and institutional investors in MMFs, such as pension plans, corporations, and municipalities all benefit from the stability and soundness of MMFs.

According to a 2020 report from the Investment Company Institute ("ICI"):

> *Retail prime money market funds had $465 billion in assets at year-end 2019. Institutional prime money market funds, which totaled $309 billion, are purchased by institutional investors such as businesses ($88 billion), insurance companies and other financial firms ($50 billion), nonprofit organizations ($13 billion), and other entities ($9 billion). Institutional prime money market funds can be, and often are, purchased by individuals ($150 billion) through broker-dealers, variable annuities, 529 plans, individual retirement accounts (IRAs), and 401(k) and similar retirement plans.*

Difference Between Funds

It is imperative that the SEC avoid applying a uniform regulatory framework to all MMFs. Government, prime, and tax-exempt funds invest in different securities with different credit and liquidity risk. Government and tax-exempt funds, which invest in stable government debt instruments and collateralized repurchase agreements, face little to no default risk, while commercial paper or certificates of deposit, which are primarily found in prime funds, present higher risk. The difference in risk and return warrants a principles-based framework of regulation that ensures funds are cost-efficient and provide returns commensurate with the risk investors are expecting.

Swing Pricing

Swing pricing should not be mandated in the United States. Dilution, or the decline in value of the fund held by investors who did not redeem their shares, should be avoided without having to force swing pricing procedures on MMFs. Swing pricing is a de facto punishment for leaving a fund and cannot be realistically implemented in funds in the United States.

The SEC has decided to move forward with mandatory swing-pricing on institutional prime and tax-exempt funds. The Proposal also requires MMF boards to submit to the SEC a "report no less frequently than annually."

Between the punitive effects of swing pricing and the lower yields received from MMFs, institutional investors could decide to withdraw entirely from MMFs.

Additionally, the burdensome and continuous data calculations to make swing pricing work is expensive and would surely increase costs on MMFs and thus increase the cost to invest. The SEC even admits that "swing pricing would require affected money market funds to estimate both direct and indirect trading costs on a daily or more frequent basis, which may be particularly time consuming and challenging during times of stress." The SEC goes on to say that "estimating transaction costs and market impact factors of each component of a money market fund portfolio may be time consuming and difficult, especially during a liquidity freeze."

Implementation of federally mandated swing pricing during periods of large redemptions will significantly increase costs for MMFs and potentially lower returns for investors. The Brookings Institution points out that if a European-style swing pricing regime were to take place in the United States, "agreements would need to be renegotiated," and software "would need to be overhauled." Financial intermediaries "would also need to rework their client agreements." The piece also states that "[s]maller fund management companies may not have the resources to implement swing prices." Business professors at New York University and Brandeis University have also found the swing pricing requirement in the Proposal to be "operationally difficult to implement." MMFs in the United States function differently from Europe. Because of this difference, the SEC cannot merely impose swing pricing procedures onto MMFs without any consideration of the exorbitant costs and dearth of evidence that swing pricing would prevent periods of large redemptions when there is a legitimate market instability.

The Financial Stability Board ("FSB") also admitted that swing pricing is not compatible with MMFs. In one FSB report, it stated that swing pricing "may not be compatible with features some MMFs offer, such as same-day settlement and multiple [net asset value] strikes per day (other related alternatives, such as anti-dilution levies, could allow for continued same-day settlement)."

Swing factors are also unlikely to deter investors from redeeming their money. The fear of dilution is not why investors participate in redemptions. In practice, investors redeem to "deploy their assets for other uses or adjusting their investment portfolios based on changes in circumstances or risk tolerances."

Additionally, fund managers in the United States value their net asset values ("NAVs") at the bid price of the securities and therefore cannot move their price downward when a swing factor would need to be imposed to head off excessive redemptions. Swing factors are ineffective for MMFs in the United States.

Wash Sale Rules

Swing pricing poses tax reporting difficulties for retail investors. MMFs with floating and stable NAVs are exempt from gross proceeds tax reporting requirements because of the nature of MMFs. If swing pricing is implemented, retail investors could potentially have to report capital gains or losses unless the Treasury Department clarifies that they are exempt from reporting.

The SEC should ensure that wash sale rules will not apply if new swing pricing procedures are adopted. Future guidance should ensure that under any mandated swing pricing, MMFs will continue to be exempt.

Negative Interest Rate Environment

The adverse implications of instituting a negative interest rate environment are well understood. If this situation were to occur in the United States, as the Proposal assumes, the SEC should ensure that MMFs are provided the flexibility to determine the best course of action that maintains a steady stream of liquidity and promotes stability within the market. Should a fund manager decide to pursue a floating NAV MMF in a negative rate environment, they should be allowed to do so.

Conversely, if a sponsor would prefer to maintain a stable NAV for their government and retail funds, they should be afforded the flexibility to pursue policies that they feel best complement their funds and the best interests of their investors.

The Proposal's decision to restrict MMFs from participating in share cancellations and reverse stock splits is myopic. The SEC offers no substantive evidence for why it should "prohibit money market funds from operating a reverse distribution mechanism, routine reverse stock split, or other device that would periodically reduce the number of the fund's outstanding shares to maintain a stable share price."

Any reforms that are adopted should only focus on institutional prime funds that carry more risk. As the SEC pursues a final rule, it should keep in mind that government and tax-exempt funds for both retail and institutional investors are highly stable and pose little to no risk in the MMF market. At the same time, institutional prime funds offer higher yields and therefore offer a more attractive investment option than funds that largely invest in government securities. It would be unwise to implement regulations that reform non-institutional prime funds to an extent where investors would find the investments unattractive and look elsewhere. In fact, this could push investors toward other investment options that are riskier and could lead to market instability—exactly what the SEC is trying to avoid.

Removal of Redemption Gates/Fees

The removal of the tie between liquidity thresholds and redemption fee and gate provisions, as offered in the Proposal, will stymie future runs on MMFs and maintain stability in the market. At the same time, the increased liquidity thresholds could slightly reduce returns for investors on already low-yielding assets.

Since the implementation of liquidity thresholds and gates and fees by the SEC in the MMF reforms of 2010 and 2014, the landscape of MMFs has changed drastically. Government MMFs, saw large inflows while institutional prime funds saw large outflows and now make up the fewest amount of the overall number of MMFs. According to the Federal Reserve, after the SEC's reforms, "investors fled from prime to government MMFs, with total outflows exceeding $1 trillion."

Even with liquidity thresholds and gate and fee provisions, institutional prime funds saw the largest share of outflows in March 2020. The SEC is taking the right approach by removing the requirement enacted in 2016, which authorizes funds to impose fees or gates if their weekly liquid assets fall below 30 percent.

Currently, retail prime funds are subjected to the same fees and gates requirements as institutional prime funds. Removing the tie between the threshold and the gates and fees will also benefit retail investors.

Another alternative could be to allow funds to decide whether to impose a fee based on a multiplicity of factors that make it apparent that there is real stress in the market and redemptions are not just a result of institutional investors fearing that a fund might pass an arbitrary threshold and restrict them from redeeming their money.

Increased Liquidity Thresholds

As stated above, it is essential that the SEC delink liquidity thresholds from fees and gates. The SEC has proposed to delink the requirements by eliminating the gates and fees and simultaneously increasing the liquidity thresholds for daily and weekly liquid assets for *all* MMFs.

However, increasing the liquidity thresholds for MMFs is not based on observations of systemic and repetitive instances of severe instability within the market. In 2008 only one MMF, Reserve Primary Fund, "broke the buck" out of more than 800 MMFs in existence. In March 2020, most industry participants agree that specifically the tie between the liquidity threshold and the possibility of fund managers activating fees or gates spooked investors to redeem funds. During the large redemption period only one institutional prime fund dipped below the 30 percent weekly liquid asset threshold.

Under the Proposal, the SEC is mandating 25 percent and 50 percent liquid asset thresholds for daily and weekly liquid assets, respectively. This is supposed to provide a buffer "based on redemptions in March 2020." According to ICI, from 2010 to 2021 institutional prime funds on average "held 44 percent of their assets in weekly liquid assets, and retail prime money market funds held on average 41 percent of their assets in weekly liquid assets." The new liquidity thresholds in the Proposal will likely achieve the goal of enhanced stability for institutional prime funds. However, the change could also slightly lower yields for investors because funds may have to sell off longer-term, higher-yielding securities in favor of short-term, lower-yielding securities to meet liquidity requirements. **Any final modifications the SEC makes to liquidity thresholds should focus on market stability without imposing requirements that unnecessarily hamper returns to investors.**

Application of the new thresholds to *all* MMFs is also unnecessary. In March 2020, institutional prime funds saw the largest outflows of all the different types of funds. However, retail prime and tax-exempt funds "saw significantly more muted outflows." **The SEC's decision to prescribe elevated liquidity thresholds to all MMFs without consideration of the actual risk and lack of evidence of instability is an arbitrary and capricious determination.**

Floating NAV

Broad application of a floating NAV to retail funds in addition to institutional funds will not slow redemptions and runs on MMFs. In March 2020, institutional prime funds, which are already subject to a floating NAV, saw more outflows than other types of MMFs. The fact that the NAVs were floating made no conceivable difference.

Private Liquidity Exchange Bank

Establishing a liquidity exchange bank ("LEB") is not a realistic solution to ward off runs on MMFs. The LEB would require significant time and money to develop and operate. Additionally, pooling funds from various MMFs raises conflict of interest concerns and could potentially create a situation in which some MMFs ride on the success of other funds, without seeking to improve their own liquidity, operational, or risk issues.

Capital Buffers

Imposing capital buffers on MMFs would reduce returns for investors while also not necessarily protect investors from runs. Requiring capital buffers could also negate the benefits of MMFs altogether and force managers to eliminate MMF products. This reduces investment options for both retail and institutional investors and eliminates stable investment options for retirement plans. The cost of imposing capital buffers is too great for adoption.

Minimum Balance at Risk

The alternative idea of imposing a minimum balance at risk (MBR) on invested money in MMFs reduces liquidity for retail and institutional investors. Implementation of MBR would likely drive investment out of MMFs.

Recordkeeping for Rule 31a-2

The Proposal is requiring overly burdensome data collection and bookkeeping if swing pricing is adopted in the final rule. The SEC is mandating that MMFs provide information "evidencing and supporting each computation of an adjustment to net asset value of their shares based on swing pricing policies and procedures established and implemented" under the Proposal. Not only does this reporting and recordkeeping require collection of minutiae, but it also poses significant privacy concerns. The SEC was hacked as recently as 2017. If this happened again, it could expose certain proprietary information to bad actors.

Concluding Thoughts

Proposals such as mandating swing pricing for large redemptions in MMFs is incompatible with certain business models and will raise the cost of investing.

MMFs should not be subjected to overburdensome mandates. Instead, the SEC should provide the tools necessary for MMFs to combat instability and excessive redemptions. This will preserve investor confidence, maximize returns, and preserve liquidity and stability in one of the safest and most reliable investment options for institutions and individuals.

ATR appreciates the opportunity to comment on the Proposal. If you have any questions, please contact Bryan Bashur at [redacted].

Sincerely,

Americans for Tax Reform