



December 14, 2008

Florence Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Subject: Temporary Exemption for Liquidation of Certain Money Market Funds,  
File No. S7-32-08

Dear Ms. Harmon:

The Coalition of Mutual Fund Investors (CMFI) is pleased to provide comments to the Securities and Exchange Commission (“Commission” or “SEC”), regarding the interim final temporary rule to provide relief from certain provisions of the Investment Company Act for money market funds that have elected to participate in a temporary guarantee program established by the U.S. Department of the Treasury.<sup>1</sup>

Under this temporary program, funds from the Exchange Stabilization Fund will be used to guarantee the share price of money market funds that have a policy of maintaining a stable share price of \$1.00 per share. The Commission intends to provide an exemption from certain redemption rules in order to facilitate an orderly liquidation of a fund that “breaks the buck.”

The Commission has asked for comments on whether the proposed conditions for exemptive relief are adequate to protect the interests of security holders. The Commission also has asked if the temporary final rule should include additional conditions and, if so, what those conditions should be.

CMFI believes that the SEC and the Treasury Department can strengthen investor protections in the event of a liquidation of a money market fund by applying the intermediary information-sharing provisions of SEC Rule 22c-2, to ensure an accurate and orderly liquidation process for investors in omnibus accounts.

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<sup>1</sup> The Coalition of Mutual Fund Investors (CMFI) is an Internet-based shareholder advocacy organization which represents the interests of individual investors on mutual fund policy issues. CMFI’s website can be accessed at [www.investorscoalition.com](http://www.investorscoalition.com).

As the Commission is well aware, many money market fund shares are sold through third-party financial intermediaries, such as brokers, fund supermarkets, financial advisors, and retirement plan providers. Typically, these intermediaries consolidate their daily order flow for each money market fund into one “omnibus” order. Each intermediary appears on a money market fund’s books as the shareholder of record, often representing hundreds or thousands of beneficial owners through an omnibus account.

Omnibus accounts lack transparency at the mutual fund level because the identity of the intermediary’s customers and the transactions of these investors are not generally disclosed to the compliance personnel at a fund. A number of the market timing abuses that were uncovered over the past five years were found to have occurred in these opaque omnibus accounts.

To remedy this problem and improve the transparency within these accounts, the Commission promulgated Rule 22c-2. This Rule became effective in October 2007, and it requires all mutual funds, including money market funds, to have written agreements with all of their financial intermediaries, in order to facilitate information sharing at the individual investor level.<sup>2</sup> Rule 22c-2 requires an intermediary to provide shareholder identification and transaction information for any or all of its customers at the request of a fund.<sup>3</sup>

While the intention of Rule 22c-2 was to improve information sharing within these accounts—to combat market timing and other abusive short-term trading practices—the Rule does not restrict either the frequency of or the purpose for requesting this information. CMFI believes that Rule 22c-2 should be used to improve the guaranteed payment process for any money market fund which faces a liquidation event.

The current rules of the Treasury guarantee program do not address the unique issues of omnibus accounting. Under the Treasury Department’s Guarantee Agreement with participating funds, payments are only made to “shareholders of record,” which means that investors transacting through an intermediary must rely on that intermediary to disburse their guaranteed payment. The investment adviser and the fund itself only have to use “best efforts” to ensure that beneficial owners within omnibus accounts receive their payments. Specifically, Section 7(k) of the Guarantee Agreement states:

The Investment Company and the Investment Adviser of the Affected Fund shall use their best efforts to assure that any Designated Shareholder that is not the

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<sup>2</sup> Mutual Fund Redemption Fees, 70 Fed. Reg. 13,328 (Mar. 18, 2005); Mutual Fund Redemption Fees, 71 Fed. Reg. 11,351 (Mar. 7, 2006); Mutual Fund Redemption Fees, 71 Fed. Reg. 58, 257 (Oct. 3, 2006).

<sup>3</sup> CMFI has been supportive of Rule 22c-2 because it offers more transparency at the individual investor level within omnibus accounts. However, the Rule is flawed in that it does not require daily monitoring of customer identities and transaction information, something that can occur in a very cost-effective manner through the back office systems currently operating in the mutual fund industry. You can obtain more information about how to improve Rule 22c-2 by reading CMFI’s comment letters to the SEC on the Regulatory Action page of our website: <http://www.investorscoalition.com/regulatory.htm>.

beneficial owner of the Designated Shares promptly disburses the Designated Shareholder Payment to the beneficial owner or owners of the Designated Shares. Upon the request of the Treasury, the Investment Company shall provide the Treasury and the SEC with a written plan that describes the actions it will take to provide greater assurance that the Designated Shareholder Payment will be paid to the beneficial owner of the Designated Shares.<sup>4</sup>

In section 9(j) of the Guarantee Agreement, the Treasury reserves the right to ask the SEC to arrange for its personnel to inspect the books and records of any liquidating fund to help provide for an orderly liquidation and the proper disbursement of the Designated Shareholder Amounts.<sup>5</sup>

Neither the Guarantee Agreement nor the SEC's interim temporary final rule contains any requirement that Rule 22c-2 be used to ensure that a fund has full transparency within omnibus accounts in the event of a fund liquidation.

In order to protect the interests of individual investors within these third-party omnibus accounts, the Commission, with the support of the Treasury Department, should consider requiring the use of Rule 22c-2 to provide transparency within omnibus accounts, for the purpose of making guaranteed payments after a liquidation event. The information sharing provisions of Rule 22c-2 can be used to "look through" these omnibus accounts on September 19, 2008, and on the Guarantee Event, the day that a fund's Net Asset Value drops below \$0.995 and the fund is forced to liquidate.

Using Rule 22c-2 in this manner will provide a liquidating fund with the ability to ensure that beneficial owners receive their Designated Shareholder Payments in a manner that is both timely and accurate.

This recommended approach is certainly better for investors than the "best efforts" requirement in the Guarantee Agreement. This is also the preferred option that CMFI believes is currently being used for many distribution payments through the SEC Fair Fund program. Under this program, "look through" information is being provided by brokers and other intermediaries so that fund administrators can make disbursements directly to investors, rather than only relying on intermediaries to disburse these payments. Under a "look through" approach, a liquidating fund would have the option to disburse payments directly to beneficial owners. If a fund chooses to rely on intermediaries to disburse payments, the information provided from a Rule 22c-2 request will help the fund better oversee this payment process and ensure a documented audit trail.

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<sup>4</sup> Section 7 (k), Guarantee Agreement, U.S. Department of the Treasury, *available at*: [http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement\\_form.pdf](http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf).

<sup>5</sup> *Id.* at page 20.

To implement this recommended approach, the use of Rule 22c-2 should be added as a condition to the SEC's interim temporary final rule. This can be accomplished by inserting a new paragraph (c) to the interim final temporary rule, with the following new language:

(c) For the protection of security holders, the information-sharing provisions of 15 C.F.R. §270.22c-2 are to be used by the fund to facilitate an orderly liquidation process for beneficial owners investing through a financial intermediary.

As an alternative, the use of Rule 22c-2 can be required in the Treasury Department's Guarantee Agreement, through the use of the following proposed language to Section 7 (k) (new language underlined and deleted language in brackets):

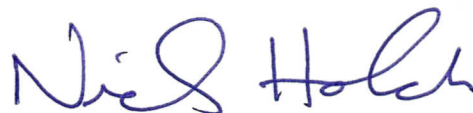
The Investment Company and the Investment Adviser of the Affected Fund shall use Rule 22c-2 [their best efforts] to facilitate the distribution of the Designated Shareholder Payment directly to beneficial owners and to assure that any Designated Shareholder that is not the beneficial owner of the Designated Shares promptly disburses the Designated Shareholder Payment to the beneficial owner or owners of the Designated Shares. Upon the request of the Treasury, the Investment Company shall provide the Treasury and the SEC with a written plan that describes any additional [the] actions it will take to provide greater assurance that the Designated Shareholder Payment will be paid to the beneficial owner of the Designated Shares.

The use of Rule 22c-2 can improve the disbursement process for any fund which faces a liquidation event. Instead of just using "best efforts," a fund should be able to rely on this Rule to have full transparency within omnibus accounts and ensure that all of its beneficial owners receive the guaranteed payments provided under this Treasury program.

CMFI urges the Commission to amend its interim temporary final rule to require the use of Rule 22c-2 to strengthen the protections for beneficial owners within third-party omnibus accounts.

Thank you for your consideration of these views. If you have any questions or require additional information, please feel free to contact me at 202-624-1461 or via email at [nielsholch@att.net](mailto:nielsholch@att.net).

Sincerely,



Niels Holch  
Executive Director

Florence E. Harmon  
December 14, 2008  
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cc: The Honorable Christopher Cox  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
Andrew Donahue, SEC Division of Investment Management  
Robert Plaze, SEC Division of Investment Management  
Thu B. Ta, Division of Investment Management  
Diane Blizzard, Division of Investment Management