

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-72658; File No. S7-08-14

July 23, 2014

NOTICE OF PROPOSED EXEMPTIVE ORDER GRANTING PERMANENT EXEMPTIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 FROM THE CONFIRMATION REQUIREMENTS OF EXCHANGE ACT RULE 10b-10 FOR CERTAIN MONEY MARKET FUNDS

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Exemptive Order; Request for Comment.

SUMMARY: Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 10b-10(f), the Securities and Exchange Commission (“SEC” or “Commission”) is proposing to grant exemptive relief, subject to certain conditions, from the immediate confirmation delivery requirements of Exchange Act Rule 10b-10 for transactions effected in shares of any open-end management investment company registered under the Investment Company Act of 1940 (“Investment Company Act”) that holds itself out as a money market fund operating in accordance with Rule 2a-7(c)(1)(ii) of the Investment Company Act.

DATES: Comments must be received on or before August 19, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-08-14 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Kevin M. O’Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-08-14. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet website (<http://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without charge; the Commission does not edit personal identifying information from submissions. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Natasha Vij Greiner, Branch Chief, Jonathan C. Shapiro, Attorney-Adviser, George Makris, Attorney-Adviser, at 202-551-5550, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

I. Background

Exchange Act Rule 10b-10 addresses broker-dealers’ obligations to confirm their customers’ securities transactions.¹ Under Rule 10b-10(a), a broker-dealer generally must provide customers with information relating to their investment decisions at or before the completion of a securities transaction.² Rule 10b-10(b), however, provides an exception for

¹ 17 CFR 240.10b-10.

² 17 CFR 240.10b-10(a).

certain transactions in money market funds that attempt to maintain a stable net asset value (“NAV”) and where no sales load or redemption fee is charged.³ The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly basis (subject to certain conditions set forth in Rule 10b-10(b)(2) and (3)) in lieu of immediate confirmations for all purchases and redemptions of shares of such funds.⁴ Accordingly, customers historically have received information for their transactions in shares of money market funds on a monthly basis.

Today, the Commission adopted amendments to Rule 2a-7 of the Investment Company Act. Among other things, the amendments require institutional prime money market funds, which, under the prior rule, were permitted to maintain a stable net asset value, to sell and redeem shares based on the current market-based value of the securities held in their portfolios, *i.e.*, transact at a “floating” NAV.⁵ As a result, institutional prime money market funds, like other mutual funds, will now be required to value their portfolio securities using market-based factors (rather than amortized cost) and sell and redeem shares at prices rounded to the fourth

³ 17 CFR 240.10b-10(b).

⁴ With respect to such money market funds, Exchange Act Rule 10b-10(b)(2) requires a broker-dealer to give or send to a customer within five business days after the end of each monthly period a written statement disclosing, each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by Rule 10b-10(a) will be furnished upon written request: *Provided, however*, that the written statement may be delivered to some other person designated by the customer for distribution to the customer. 17 CFR 240.10b-10(b)(2). Exchange Act Rule 10b-10(b)(3) requires that such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in Rule 10b-10(b)(1) in lieu of an immediate confirmation. 17 CFR 240.10b-10(b)(3).

⁵ *See* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9616, Investment Advisers Act Release No. 3879, Investment Company Act Release No. 31166, at section III.B (July 23, 2014) (“Money Market Fund Reform Adopting Release”).

decimal place (rather than rounded to the nearest penny).⁶ However, institutional prime money market funds will continue to be subject to the “risk limiting” provisions of Rule 2a-7 and therefore will continue to be limited to investing in short-term, high-quality, dollar-denominated instruments.⁷

Given that share prices of such institutional prime money market funds likely will fluctuate under the amended rule, absent exemptive relief, broker-dealers will not be able to continue to rely on the current exception under Rule 10b-10(b) for transactions in money market funds operating in accordance with Rule 2a-7(c)(1)(ii).⁸ Instead, broker-dealers will be required to provide immediate confirmations for all such transactions.

In the money market fund reform proposing release,⁹ the Commission requested comment on whether, if the Commission adopted the floating NAV requirement, broker-dealers should be required to provide immediate confirmations to all institutional prime money market fund investors. Commenters generally urged the Commission not to impose such a requirement, arguing that there would be significant costs associated with broker-dealers providing immediate

⁶ *Id.*; Investment Company Act Rule 2a-7(c)(1)(ii), 17 CFR 270.2a-7(c)(1)(ii).

⁷ Money Market Fund Reform Adopting Release, at 143; *see also* Investment Company Act Rule 2a-7(d), 17 CFR 270.2a-7(d) (risk-limiting conditions).

⁸ *See generally* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); *see also* Exchange Act Rule 10b-10(b)(1), 17 CFR 240.10b-10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable net asset value).

As adopted, government and retail money market funds are exempt from the Investment Company Act Rule 2a-7(c)(1)(ii) floating NAV requirement, and therefore, will continue to maintain a stable NAV. *See* Money Market Fund Reform Adopting Release, at sections III.C.1 and III.C.2. Accordingly, for investor transactions in such exempt funds, broker-dealers would continue to qualify under the exception under Rule 10b-10 and be permitted to send monthly transaction reports.

⁹ Money Market Fund Reform; Amendments to Form PF, 78 FR 36934.

confirmations.¹⁰ Such costs are expected to include both (1) the ongoing costs of creating and sending trade-by-trade confirmations and (2) the costs of implementing new systems to generate confirmations.¹¹ The Commission recognizes that there may be costs associated with requiring immediate confirmations for such transactions,¹² and is aware that such costs may be passed on to investors in funds subject to the floating NAV requirements.¹³ Nonetheless, given that institutional prime money market funds likely will fluctuate in price, some investors may find value in receiving information relating to their investment decisions at or before the completion of a securities transaction. The Commission requests comments regarding these potential benefits.

II. Discussion of Proposed Relief

After careful consideration, the Commission is proposing to grant exemptive relief pursuant to Section 36 of the Exchange Act¹⁴ and Exchange Act Rule 10b-10(f)¹⁵ that would

¹⁰ See Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated September 17, 2013 (“Investment Company Institute Letter”), at 37, available at <http://www.sec.gov/comments/s7-03-13/s70313-200.pdf>; Letter from Timothy W. Cameron, Managing Director, SIFMA Asset Management Group, John Maurello, Managing Director, SIFMA Private Client Group, Matthew J. Nevins, Managing Director and Associate General Counsel, SIFMA Asset Management Group, dated Sept. 17, 2013 (“9/17/13 SIFMA Letter”), at Appendices 1 and 2, available at <http://www.sec.gov/comments/s7-03-13/s70313-199.pdf>; Letter from J. Charles Cardona, President, The Dreyfus Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated September 17, 2013 (“Dreyfus Letter”), at 35, available at <http://www.sec.gov/comments/s7-03-13/s70313-167.pdf>; Letter from John D. Hawke, Jr., Arnold & Porter, on behalf of Federated Investors, Inc. and its subsidiaries, to Chair Mary Jo White, Commission, dated September 17, 2013 (“Federated Letter”), at 22, available at <http://www.sec.gov/comments/s7-03-13/s70313-225.pdf>; Letter from Anthony J. Carfang, Partner, Cathryn R. Gregg, Partner, Paul LaRock, Principal, Steven Wiley, Manager, Treasury Strategies, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2013 (“Treasury Strategies Letter”), available at <http://www.sec.gov/comments/s7-03-13/s70313-118.pdf>.

¹¹ See, e.g., Federated Letter, at 22.

¹² Money Market Fund Reform Adopting Release, at section III.B.7.

¹³ See, e.g., Dreyfus Letter, at 35 (“Confirming transactions in [variable net asset value money market mutual funds] on a transaction basis will increase costs, which will be passed on to [money market mutual fund] investors or underwriters.”).

¹⁴ Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from certain provisions

allow broker-dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Rule 2a-7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations.

The floating NAV requirement, as adopted, only applies to institutional prime money market funds – not to government or retail money market funds.¹⁶ Shareholders that invest in institutional prime money market funds will continue to have extensive investor protections separate and apart from the protections provided under Exchange Act Rule 10b-10. For example, as stated above, funds subject to the floating NAV requirement will continue to be subject to the “risk limiting” conditions of Rule 2a-7.¹⁷ These conditions limit the risk in a money market fund’s portfolio by governing the credit quality, liquidity, diversification, and maturity of money market investments. Accordingly, mutual funds that hold themselves out as money market funds – including institutional prime money market funds – may acquire only investments that are short-term, high-quality, dollar-denominated instruments.¹⁸

of the Exchange Act or certain rules or regulations thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm.

¹⁵ Exchange Act Rule 10b-10(f) specifies the Commission may conditionally or unconditionally exempt any broker or dealer from the requirements of Rule 10b-10(a) and Rule 10b-10(b) with regard to specific transactions or specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of the rule. 17 CFR 240.10b-10(f).

¹⁶ See Investment Company Act Rule 2a-7(c)(1)(ii), 17 CFR 270.2a-7(c)(1)(ii). As defined in Investment Company Act Rule 2a-7(a)(25), as amended, a retail money market fund is defined as a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons. 17 CFR 270.2a-7(a)(25). Under Rule 2a-7(a)(16), a government money market fund is defined as a money market fund that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully. 17 CFR 270.2a-7(a)(16).

¹⁷ See Investment Company Act Rule 2a-7(d), 17 CFR 270.2a-7(d) (risk-limiting conditions).

¹⁸ *Id.*; see also Money Market Fund Reform Adopting Release, at 143.

While institutional prime money market fund shares will fluctuate, they are not likely to fluctuate daily, primarily due to the high quality and short duration of such funds' underlying portfolio securities.¹⁹ In addition, the Commission anticipates that information on prices will be available through other means.²⁰ For example, under the new fund disclosure requirements of Investment Company Act Rule 2a-7(h)(10)(iii), investors – including institutional investors – will be able to access a fund's daily mark-to-market NAV per share on a money market fund's website.²¹ Moreover, as previously noted, commenters raised concerns about the costs associated with requiring immediate confirmation for such transactions, which, to some extent, may be passed on to investors.²²

Under Exchange Act Rule 10b-10(b), the exemption from providing immediate confirmations consistent with the written notification requirements under Rule 10b-10(a) is subject to certain conditions.²³ The Commission preliminarily believes that these conditions are also appropriate for institutional prime money market funds subject to the floating NAV requirement under Rule 2a-7(c)(1)(ii) in order to provide customers with consistent information for all money market fund transactions.

¹⁹ *Id.*, at 155 n.491. Based on staff analysis of Form N-MFP data between November 2010 and November 2013, 53% of money market funds would have fluctuated in price over a twelve-month period with an NAV priced using basis point rounding, compared with less than 5% of money market funds that would have fluctuated in price using 10 basis point rounding. *Id.*, at 158-59.

²⁰ *Id.*, at section III.E.9.c.

²¹ 17 CFR 270.2a-7(h)(10)(iii).

²² Another commenter stated that institutions and intermediaries can demand more frequent confirmations through independent negotiations with money market fund providers. *See* Dreyfus Letter, at 35. Such an option, however, would not necessarily be available for retail investors in institutional prime money market funds.

²³ *See* 17 CFR 240.10b-10(b); *see also supra*, Note 4, citing certain specific relevant conditions.

Given that there will be price fluctuations in institutional prime money market funds, the Commission preliminarily believes that it may be necessary or appropriate in the public interest and consistent with the protection of investors to also require that broker-dealers provide immediate confirmations upon a customer's request. Accordingly, to be eligible for the exemption from Rule 10b-10(a), the Commission proposes an additional condition beyond those in place pursuant to Rule 10b-10(b). Specifically, the Commission proposes that, to be exempt from the immediate confirmation requirements of Rule 10b-10(a), the broker-dealer must (1) notify the customer of its ability to request delivery of an immediate confirmation, consistent with the written notification requirements of Exchange Act Rule 10b-10(a), and (2) not receive any such request from the customer. This condition would provide investors with an option to receive confirmation information regarding a transaction at or before the completion of a securities transaction, while also providing relief to broker-dealers in circumstances where customers would not view this additional information as beneficial.

Taking all of these factors into consideration, and consistent with the exemptions and related conditions applicable to money market funds that attempt to maintain a stable NAV, the Commission preliminarily believes that a conditional exemption is necessary and appropriate in the public interest, and consistent with the protection of investors. Therefore, the Commission proposes to exempt broker-dealers from the written notification requirements under Exchange Act Rule 10b-10(a) when effecting transactions in money market funds operating in accordance with Investment Company Act Rule 2a-7(c)(1)(ii), for or with the account of a customer, where: (i) no sales load is deducted upon the purchase or redemption of shares in the money market fund, (ii) the broker-dealer complies with the provisions of Rule 10b-10(b)(2) and Rule 10b-10(b)(3) that are applicable to money market funds that attempt to maintain a stable NAV

referenced in Rule 10b-10(b)(1),²⁴ and (iii) the broker-dealer has notified the customer of its ability to request delivery of an immediate confirmation consistent with the written notification requirements of Exchange Act Rule 10b-10(a) and has not received such request from the customer.

Solicitation of Comment

The Commission requests comment on all aspects of this proposed exemptive order, including, but not limited to, the following questions:

- Do the monthly statements and other requirements under Rule 10b-10(b)(2) and (3) provide an appropriate alternative to immediate confirmations for transactions in floating NAV money market funds? What are the advantages and disadvantages to various market participants (including broker-dealers, shareholders, and funds) of permitting broker-dealers to provide fund shareholders of floating NAV money market funds with monthly confirmation statements?
- What are the reasons why shareholders might prefer to receive confirmation information immediately for floating NAV money market funds? What are the costs to broker-dealers associated with providing immediate confirmations? In particular, what are the nature and magnitude of such costs associated with providing immediate confirmations, and what, if any, costs would be passed along to investors?
- Should the Commission consider any alternatives other than the proposed exemption to the Exchange Act Rule 10b-10 requirements in the context of a floating NAV fund outlined above, such as requiring the provision of confirmations to shareholders at some

²⁴ The proposed conditions under “(i)” and “(ii)” above are consistent with the confirmation delivery requirements provided in Exchange Act Rule 10b-10(b) for all transactions in investment companies that attempt to maintain a constant NAV where no sales load or redemption fee is charged. 17 CFR 240.10b-10(b).

different time interval (*e.g.*, weekly statements)? Should broker-dealers be required to provide immediate confirmations upon request by an investor? Rather than requiring immediate confirmations upon request by an investor, should the Commission consider any alternatives (*e.g.*, requiring next-day delivery upon investor request)? What benefits and costs would be associated with any alternative approach?

- Should the Commission give investors the option to request delivery of an immediate confirmation statement for floating NAV money market funds? If investors should have that option, should the Commission require that broker-dealers notify the customer of its ability to request delivery of an immediate confirmation? What are the advantages and disadvantages of providing investors with the ability to request immediate confirmations? What are the potential effects on broker-dealers, investors, or other market participants? Should the Commission consider an alternative approach, such as requiring immediate confirmations unless the customer opts out?
- Would providing an exemption from the immediate confirmation delivery requirements of Exchange Act Rule 10b-10, as proposed, provide appropriate relief to broker-dealers and, at the same time, provide sufficient information to investors?

By the Commission.

Kevin M. O'Neill
Deputy Secretary