

## **EXHIBIT 6**

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7/27/09



July 27, 2009

**VIA HAND DELIVERY**

The Honorable Paul G. Gardephe  
United States District Court Judge  
United States Courthouse  
500 Pearl Street, Room 920  
New York, New York 10007

Re: *Securities and Exchange Commission v. Reserve Management Co., Inc., et al.*, 09-CV-4346 (PGG)

Dear Judge Gardephe:

The Electric Reliability Council of Texas, Inc. ("ERCOT") respectfully submits this statement of objection to the proposed Plan of Distribution (the "Plan of Distribution") of the Securities and Exchange Commission (the "Commission") set forth in the Appendix to the Court's Order of June 8, 2009. Specifically, ERCOT objects to the Commission's proposal to distribute the assets of The Reserve Primary Fund (the "Primary Fund") on a *pro rata* basis to all shareholders who were not fully paid for shares they beneficially owned on or after September 15, 2008 ("Unpaid Shareholders"). ERCOT believes that the Plan of Distribution should not discriminate against shareholders, like ERCOT, who submitted valid redemption requests prior to the time the Primary Fund announced that its net asset value ("NAV") per share had fallen below \$1.00 (*i.e.*, "broken the buck"). ERCOT believes that, consistent with the Commission's own rules, shareholders who submitted redemption requests prior to 3 p.m. Eastern Prevailing Time ("EPT") (which was the last time the NAV was calculated prior to such announcement) should receive distributions at prices based on the stated NAV of the Primary Fund at the time of their respective redemption requests, plus interest from the date of the redemption request through the date of distribution.

ERCOT recognizes that approval of a final Plan of Distribution may take some time in light of the divergent interests of different classes of shareholders. Pending such final approval, ERCOT respectfully request that the Court and the Commission distribute to Unpaid Shareholders the maximum amount of funds that can be disbursed without limiting the Court's options in respect of the final Plan of Distribution.

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### Background

ERCOT is a membership-based 501(c)(4) nonprofit corporation, subject to oversight by the Public Utility Commission of Texas and the Texas Legislature. ERCOT manages the flow of electric power to 21 million Texas customers – representing 85 percent of the state’s electric load and 75 percent of the Texas land area. At one time, ERCOT maintained funds totaling more than \$47.8 million in the Primary Fund, on behalf of itself and its market participants.

The Primary Fund functioned as a money market fund subject to Rule 2a-7 of the Investment Company Act of 1940, as amended (the “Investment Company Act”). Rule 22c-1(b)(1) under the Investment Company Act requires money market funds to compute their NAV “no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the investment company sets.” Unlike most other money market funds, which compute their NAV on a daily basis, the Primary Fund computed its NAV on an hourly basis. Under the Primary Fund’s normal procedures, a shareholder wishing to redeem its shares would submit a redemption request and would promptly receive payment (usually the same day) at a price based on the NAV computed within the hour following the redemption request.

On September 16, 2008, ERCOT submitted a formal written request to close all ERCOT investment accounts with the Primary Fund, which at the time were valued at approximately \$47.8 million. The redemption request was delivered via facsimile at 2:18 p.m. EPT and via email at 2:20 p.m. EPT. The redemption request was acknowledged and confirmed on the same day by Ryan N. Green (Vice President, Institutional Sales) and Elliott Goldstein (Vice President, Institutional Relationship Manager) of The Reserve Management Company, Inc. (“RMCI”) via email at 3:39 p.m. EPT and 3:42 p.m. EPT, respectively.

At 3:45 p.m. EPT on September 16, 2008, the Board of Trustees of the Primary Fund voted to value the debt securities issued by Lehman Brothers Holdings, Inc. (“Lehman”) and held by the Primary Fund at zero. According to the minutes of the meeting, “[i]n doing so the Board recognized that the impact on NAV per share would be 3 cents, commencing with redemptions to be priced at 4 p.m. and following.”

At approximately 4:00 p.m. EPT on September 16, 2008, RMCI issued a press release announcing that the “value of the debt securities issued by Lehman Brothers Holdings, Inc. (face value \$785 million) and held by the Primary Fund has been valued at zero effective 4:00PM New York time today. As a result, the NAV of the Primary Fund, effective as of 4:00PM, is \$0.97 per share. All redemption requests received prior to 3:00PM today will be redeemed at a net asset value of \$1.00 per share.”

On September 22, 2008, the Commission issued a temporary order pursuant to Section 22(e)(3) of the Investment Company Act (the “Commission Order”) permitting the Primary Fund to (i) suspend the right of redemption in respect of its outstanding redeemable shares and (ii) postpone payment for shares that had been submitted for

redemption for which payment had not been made. The Commission Order was effective as of September 17, 2008.

On November 26, 2008, RMCI issued a press release indicating that an internal calculation error had caused the Primary Fund's NAV per share to decrease from \$1.00 to \$0.99 between 11:00 a.m. and 4:00 p.m. EPT on September 16, 2008 (and \$0.97 per share for the time period after 4:00 p.m. EPT).

On May 5, 2009, the Commission filed with the Court a Complaint (the "Complaint") against defendants RMCI, Resrv Partners Inc., Bruce Bent Sr. and Bruce Bent II, and against the Primary Fund as relief defendant, alleging numerous violations of the federal securities laws in connection with the failure of the Primary Fund and seeking to compel the distribution of all remaining Primary Fund assets to Unpaid Shareholders on a *pro rata* basis. On May 26, 2009, the Commission filed with the Court a Memorandum of Law that sought, among other things, approval of the Commission's proposed Plan of Distribution and requested that the Court formally solicit the views of any claimants against the Primary Fund who object to the Commission's Plan of Distribution.

On June 8, 2009, the Court issued an order stating that claimants against the assets of the Primary Fund should file any objections to the entry of the relief sought by the Commission by July 22, 2009 (later extended to July 27, 2009).

#### Argument

While ERCOT supports the Commission's efforts to compel the expeditious distribution of all remaining Primary Fund assets to Unpaid Shareholders, ERCOT believes that the proposed Plan of Distribution is flawed because it fails to distinguish between shareholders who submitted redemption requests before the Primary Fund announced that it had "broken the buck" and those who did not.

At the time ERCOT submitted its redemption requests to the Primary Fund, the stated NAV of the fund was \$1.00 per share. By the terms of the redeemable shares and the Primary Fund's prospectus, the Primary Fund was legally obligated to honor a redemption request at a price equal to the stated NAV per share at the time of the redemption request. This basic legal obligation was not altered by the Commission Order, which by its terms suspended the right of redemption only as of September 17, 2008.

The Commission's proposal to distribute the Primary Fund's assets to all Unpaid Shareholders on a *pro rata* basis, without regard to the timing of redemption requests, is inconsistent with the Commission's own rules under the Investment Company Act. Rule 22c-1 under the Investment Company Act provides in relevant part that "[n]o registered investment company issuing any redeemable security . . . shall sell, redeem or repurchase any such security *except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption* or of an order to purchase or sell such security" (emphasis added). The clear purpose of this rule

is to align, as closely as possible, the price at which a fund share is redeemed with the time of the redemption request.

Moreover, under the Commission's rules, a money market fund's board of directors is charged with overseeing the process of determining the fund's NAV. In the case of the Primary Fund, the Board of Trustees held several meetings on September 16, 2008 to consider the NAV of the fund and consulted during the day with both the Commission and the Federal Reserve Bank of New York. It was only at 3:45 p.m. EPT that the Board of Trustees reached the conclusion that the assets of the Primary Fund should be valued as if the fund were in liquidation and therefore that the Lehman securities held by the fund should be valued at zero. As a result of this decision, the per-share NAV of the Primary Fund was reduced to \$0.97 as of 4:00 p.m. EPT. Shareholders of the Primary Fund were entitled to rely on the judgment of the Board of Trustees; this judgment should not be disregarded in the interest of expediency.

The Commission's proposal is also inconsistent with the plain language of its own Order issued on September 22, 2008 in respect of the Primary Fund, which by its terms only suspended the right of the redemption in the Primary Fund *effective September 17, 2008*. As of September 17, ERCOT had already exercised its right of redemption and effectively become a creditor of the Primary Fund. The fact that the Commission Order permitted the Primary Fund to suspend temporarily its payments in respect of outstanding redemption requests did not affect the Primary Fund's obligation to make such payments. The result that follows logically from both the Commission's rules and the Commission Order is that shareholders who submitted redemption requests prior to the time the Primary Fund announced that it had "broken the buck" should receive a price based on the NAV at the time of their redemption request.

While ERCOT commends the Commission's attempt to reach a swift conclusion to this matter, which has spawned numerous lawsuits, the Commission's proposal is unfair to shareholders who validly exercised their redemption rights in accordance with the Commission's own rules.

### Conclusion

For the foregoing reasons, ERCOT respectfully requests that the Plan of Distribution be modified to provide that Unpaid Shareholders who validly submitted redemption requests prior to 3:00 p.m. EPT on September 16, 2008 receive distributions in respect of their shares at prices based on the stated NAV of the Primary Fund next following the time of their respective redemption requests, plus interest from the date of the redemption request through the date of distribution. At the time of ERCOT's redemption request, the stated NAV of the Primary Fund was \$1.00 per share (later adjusted to \$0.99 per share) and, accordingly, ERCOT requests a distribution in respect of its shares at a price of at least \$0.99 per share, plus interest from September 16, 2008 through the date of distribution.

Finally, ERCOT respectfully requests that the Court and the Commission accelerate, to the extent practicable, the distribution of the remaining Primary Fund

**The Honorable Paul G. Gardephe**

**July 27, 2009**

**Page 5**

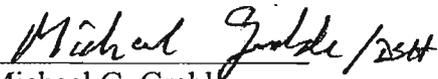
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assets. ERCOT recognizes that approval of a final Plan of Distribution may take some time in light of the divergent interests of different classes of Unpaid Shareholders. Pending such final approval, ERCOT urges the Court and the Commission to distribute to Unpaid Shareholders the maximum amount of funds that can be disbursed without limiting the Court's options in respect of the final Plan of Distribution.

ERCOT is grateful for this opportunity to provide the Court with its views in respect of the proposed Plan of Distribution.

Respectfully submitted,

ELECTRIC RELIABILITY COUNCIL OF  
TEXAS, INC.

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