



Evergreen InvestmentsSM

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Filed Electronically

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed Rules Regarding References to Ratings of Nationally Recognized Statistical Rating Organizations (File Number S7-19-08)

Dear Ms. Harmon,

The Boards of Trustees of Evergreen Money Market Trust and Evergreen Select Money Market Trust (collectively, the “Board”)¹ strongly oppose the Commission’s proposal to eliminate references to the credit ratings issued by nationally recognized statistical rating organizations (“NRSROs”) in Rule 2a-7 under the Investment Company Act of 1940, as amended (the “1940 Act”).²

The Board believes that NRSRO credit ratings serve an important independent role in assessing the quality of money market fund investments. We are in favor of improving the quality of NRSRO credit ratings, and we support the Commission’s efforts in this regard. However, we believe that simply eliminating references to NRSROs would significantly weaken the investor protections of Rule 2a-7 and place an inappropriate burden on trustees of money market funds.

¹ Evergreen Money Market Trust is an open-end management investment company that includes eight series of money market funds with assets in excess of \$14 billion as of June 30, 2008. Evergreen Select Money Market Trust is an open-end management investment company that includes six series of money market funds with assets in excess of \$42 billion as of May 31, 2008.

² In *References to Ratings of Nationally Recognized Statistical Ratings Organizations*, SEC Release No. IC- 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (the “Proposing Release”), the Commission also proposes to eliminate references to NRSROs in Rules 3a-7, 5b-3, and 10f-3 under the Investment Company Act of 1940 and Rule 206(3)-3T under the Investment Advisers Act of 1940. Although this comment letter focuses upon the proposed amendments to Rule 2a-7, the Board similarly opposes the proposed elimination of references to credit ratings issued by NRSROs in the definition of “collateralized fully” in Rule 5b-3, which is incorporated into Rule 2a-7.

NRSROs Play a Valuable Role with respect to Minimum Credit Standards Under Rule 2a-7

Rule 2a-7 is rightly concerned with the credit quality of money market funds' portfolio investments. Rule 2a-7 currently limits a money market fund's portfolio investments to securities that have received a credit rating from the "Requisite NRSROs" in one of the two highest short-term rating categories (or certain unrated securities that are of comparable quality), and that have been determined to present minimal credit risks by the fund's board or the board's delegate. We believe that it is customary for boards to delegate this responsibility to the fund's investment adviser, which would generally be better informed and more experienced than a board in making these sorts of determinations.³ The NRSRO credit rating is an objective, third-party assessment of minimum credit quality that sets the "floor" for permissible money market fund investments. Money market funds are prohibited from investing in rated portfolio securities that have not received one of the two highest short-term NRSRO ratings, even if the credit analysis conducted by the fund's investment adviser suggests that the NRSRO "incorrectly rated the instrument too low or that because of changed circumstances the instrument is now of higher quality."⁴ As trustees with responsibility for supervising money market funds, members of the Board value the independent review of the NRSROs, which, we believe, limit a money market fund's adviser's ability to pursue higher yields through investing the fund's assets in riskier securities.

The elimination of references to NRSRO credit ratings in Rule 2a-7 has the potential to permit money market funds to invest in lower-rated, higher-yielding securities, based solely on the subjective credit assessment performed by a money market fund's investment adviser. The Board believes that the elimination of references to NRSRO credit ratings significantly weakens the investor protections that the NRSRO credit rating "floor" affords, and is contrary to the Commission's long-standing position that an objective third-party credit assessment as well as a subjective assessment by the fund's investment adviser focusing on the credit risk that a security presents to a particular fund play significant roles in seeking to maintain a stable net asset value.⁵ Although there may be ways in which NRSRO ratings can be improved—and we strongly support the Commission's efforts to improve the quality of NRSRO ratings—NRSROs bring to bear skill and experience in the rating of securities that cannot reasonably be supposed to exist in the board of every money market fund.

Furthermore, the second component of Rule 2a-7's current minimum quality standards (*i.e.*, the subjective credit analysis performed by a fund's investment adviser) mitigates the Commission's concerns regarding undue reliance by investors on NRSRO credit ratings. Rule 2a-7 specifically

³ Rule 2a-7(e) permits the board to delegate certain determinations under Rule 2a-7, including the "minimal credit risk" determination (collectively, the "delegable determinations"), to the fund's investment adviser, subject to the board's oversight. For ease of reference, we refer to this credit analysis as being performed by the fund's investment adviser.

⁴ Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds, SEC Release No. IC-13380 (July 11, 1983) [1983 SEC LEXIS 1271, at *28] ("Rule 2a-7 Adopting Release").

⁵ *Id.* at *25-6, stating that "[t]he Commission believes both tests are significant" and should be retained; Concept Release: Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws, SEC Release Nos. 33-8236; 34-47972; IC-26066 (June 4, 2003) [68 FR 35257 (June 12, 2003)].

provides that the determination that a portfolio security presents minimal credit risks must be based on factors pertaining to credit quality *in addition to any rating assigned to such securities by an NRSRO*. Therefore, the requisite NRSRO credit rating is “a necessary but not sufficient condition for investing in the security and cannot be the sole factor considered in determining whether a security presents minimal credit risks.”⁶ By Rule 2a-7’s current terms, money market funds are effectively prohibited from placing undue reliance on an NRSRO credit rating or merely presuming that the NRSRO rating has received an “official seal of approval” from the Commission, two of the primary concerns expressed in the Proposing Release.

The minimum credit quality standards currently imposed by Rule 2a-7 have served money market funds and their investors well since the rule’s adoption in 1983. During that time, to our knowledge, only one money market has “broke a buck” and failed to repay fully the principal amount of its shareholders’ investments, including during the most recent period of turmoil in the credit markets.⁷ In other words, Rule 2a-7 has been stress tested, and has passed the test. Both the objective and the subjective components of Rule 2a-7’s minimum quality standards should be promoted and emphasized in the current market environment.

We Support Improving the Quality of NRSROs

In our view, increased regulatory oversight of NRSROs and the processes they employ in developing credit ratings would better address the Commission’s concerns regarding the credibility of NRSRO credit ratings and the risks associated with undue investor reliance on such ratings. The Commission’s recently proposed amendments to Form NRSRO and Rules 17g-2, 17g-3 and 17g-5 under the Securities Exchange Act of 1934 (the “1934 Act”), and proposed Rule 17g-7 under the 1934 Act are important steps in this direction.⁸ Among other things, these proposals require greater transparency in the NRSRO ratings process by requiring that certain information used in making ratings determinations be made publicly available. In turn, this publicly available information may be used by investment advisers to supplement their own credit assessments of rated securities and to gauge the ratings issued by various NRSROs. We welcome these improvements to the NRSRO rating process.

Reconsidering Rule 2a-7 in light of the Role of the Board

While the Board strongly opposes the proposal to eliminate references to the credit ratings issued by NRSRO in Rule 2a-7, it is the Board’s view that certain amendments to the Rule are appropriate to reflect better the role that boards of money market funds should play.

The 1940 Act provides for significant substantive regulation of investment companies, and imposes a number of particular obligations on their boards of trustees. However, a board of trustees nonetheless (subject, of course, to applicable state law and the provisions of the investment company’s governing documents) has very broad powers and responsibilities. These

⁶ Proposing Release at 40125.

⁷ See http://www.ici.org/home/faqs_money_funds.html.

⁸ Proposed Rules for Nationally Recognized Statistical Rating Organizations, SEC Release No. 34-57967 (June 17, 2008) [73 FR 36211 (June 25, 2008)].

include appointing and supervising the investment company's officers and service providers, such as its investment adviser, and the delegation of decision making authority to committees of the board, to officers, to service providers, and to others. This is in recognition of the fact that boards are not required to manage directly all of the affairs of the investment company, but instead may—indeed, in today's specialized world, must—delegate tasks to others with specific professional skills better suited for performing them.⁹ So far as we are aware, virtually all boards of investment companies delegate the day to day management of an investment company's investment program to an investment adviser while retaining a broad supervisory role. The trustees are not required or expected to perform portfolio management, distribution or other services directly for the investment company. Yet, by eliminating references to NRSROs in Rule 2a-7 and increasing the board's responsibilities for credit quality decisions, the Commission would increase the board's responsibility in a technical area for which the board is unlikely to be best suited.

Another important duty of a board is to monitor the potential conflicts of interest between fund management and fund shareholders.¹⁰ One manifestation of such a conflict may be the investment adviser's desire to attract investors to a money market fund by delivering superior yield through making riskier investments *vis-à-vis* shareholders' desire to invest in a "safe" money market fund that invests in high credit quality instruments. In this context, the independent assessment of an NRSRO is particularly valuable to a board charged with monitoring conflicts of interest.

As previously noted, Rule 2a-7(e) permits a money market fund's board to delegate certain delegable determinations to the fund's investment adviser, subject to the board's general oversight. The Board believes that Rule 2a-7 should be amended to provide that the investment adviser, rather than the board, should be responsible in the first instance for the delegable determinations. The Board acknowledges that the Commission previously responded in the Rule 2a-7 Adopting Release to commentators who argued that the Board should not be required to make these delegable determinations in the first instance.¹¹ However, in light of the increasingly significant responsibilities placed on mutual fund boards under various rules promulgated by the Commission, the Board believes it is important to remember that a mutual fund board's overall "watchdog" role may be hampered by unnecessary micro-management of the fund's day-to-day operations. With respect to this subject, the Commission staff has said, "We believe that independent directors are unnecessarily burdened . . . when required to make determinations that call for a high level of involvement in day-to-day activities. Rules that impose specific duties and responsibilities on the independent directors should not require them to 'micro-manage' operational matters."¹² We agree. The Board recommends that Rule 2a-7 be amended to

⁹ As the American Bar Association's Federal Regulation of Securities Committee has stated in the Fund Director's Guidebook (p. 5, 3d ed. 2006), "[i]t is the statutory responsibility of the directors of the fund—particularly the independent directors—to regularly review and approve the arrangements with entities selected to provide portfolio management, distribution services and various other services required to operate the fund."

¹⁰ *Id.*

¹¹ See Rule 2a-7 Adopting Release at *9.

¹² SEC Division of Investment Management, *Protecting Investors: A Half-Century of Investment Company Regulation*, at 266 (May 1992).

eliminate mutual fund boards' explicit responsibility in the first instance for the delegable determinations, allowing boards to focus on their oversight responsibilities. Of course, all conscientious boards of trustees will continue to review carefully an investment adviser's performance under Rule 2a-7 as part of their general oversight duties.

The Board appreciates the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Scofield". The signature is fluid and cursive, with a large loop at the end.

Michael S. Scofield

cc: Honorable Christopher Cox, Chairman
Honorable Kathleen L. Casey, Commissioner
Honorable Elisse B. Walter, Commissioner
Honorable Luis A. Aguilar, Commissioner
Honorable Troy A. Paredes, Commissioner

Andrew J. Donohue, Director, Division of Investment Management
Robert E. Plaze, Associate Director, Division of Investment Management
Erik R. Sirri, Director, Division of Market Regulation