

September 5, 2008

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*Filed Electronically*

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

Re: Release No. IC-28327, File No. S7-19-08; References to Ratings of Nationally  
Recognized Statistical Rating Organizations  
(the "Proposing Release")

Dear Ms. Harmon:

We write in response to the request of the Securities and Exchange Commission (the "SEC") for comments on the proposal to eliminate references to ratings issued by Nationally Recognized Statistical Ratings Organizations ("NRSROs") in the SEC's rules and forms. This letter focuses on two specific aspects of the proposed amendments to Rule 2a-7 (the "Proposed Amendments") under the Investment Company Act of 1940 (the "1940 Act") in response to the following question on page 12 of the Proposing Release:

*Are there alternative or additional provisions that we should consider to address the way in which money market funds should evaluate liquidity risk and determine whether to dispose of securities that present an increasing liquidity risk?*

Acquisition of Liquid Securities with New Money

Among other things, the Proposed Amendments would formally limit the percentage of a money market fund's portfolio that can be invested in illiquid securities to 10% of the fund's total assets (the "10% Test"). The text of the Proposed Amendments could be interpreted as applying the 10% Test immediately after the acquisition of *any* security. Under this interpretation of the 10% Test, a fund that exceeds the 10% limit due, for example, to liquid holdings becoming illiquid would not be permitted to acquire *any* security until it reduces the percentage of illiquid holdings to less than 10% of its total assets. This interpretation could preclude a fund from engaging in a strategy of gradually reducing the percentage of its illiquid investments by buying liquid securities with money from new investments. This would eliminate an appropriate strategy of enhancing a fund's liquidity for

\* The author of this comment letter wishes to acknowledge the contributions of Paul J. Delligatti, an associate with the Investment Management Practice Group of Morrison & Foerster LLP.

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the benefit of its shareholders. Moreover, this result is inconsistent with the Proposing Release's statement and other SEC staff guidance over the years to the effect that illiquidity limitations would not compel a fund to sell a portfolio security where the fund would suffer a loss on the sale.<sup>1</sup>

We suggest a revision to proposed Rule 2a-7(c)(5) to apply the 10% Test only after the acquisition of any security *that is not a Liquid Security* (as defined in the proposed Rule). In addition, the text of the proposed Rule would prohibit certain transactions (e.g., fund mergers) that technically involve the acquisition of additional illiquid securities but that reduce the acquiring fund's illiquid assets percentage. To allow for such a transaction, we suggest adding the following at the end of proposed Rule 2a-7(c)(5):

Notwithstanding the prohibitions of this sub-part (5), a money market fund with more than ten percent of its Total Assets invested in securities that are not Liquid Securities may acquire additional securities that are not Liquid Securities in a transaction that does not increase the percentage of the money market fund's Total Assets that is invested in securities that are not Liquid Securities.

#### "Sufficiently Liquid Test" versus the 10% Test

The Proposing Release would also limit a money market fund to holding securities that are "sufficiently liquid to meet reasonably foreseeable shareholder redemptions" (the "Sufficiently Liquid Test"). Such a standard would interpose a challenging analysis when viewed in conjunction with the 10% Test. Based on the text of the Proposing Release, which introduces these two tests as separate standards, a fund board could be in the untenable position of determining whether a money market fund will need to adopt a limit well below 10% in order to comply with the Sufficiently Liquid Test. Moreover, the subjective nature of the Sufficiently Liquid Test will require a determination of "reasonably foreseeable" redemptions, which involves subjective, forward-looking estimates. A sudden increase in redemptions that leads to an increase in reasonably foreseeable redemptions could compel a board to determine, on short notice in response to market conditions, that it needs to act quickly to impose a lower limit on a fund's illiquid investments. Also, the Sufficiently Liquid Test is not limited to potentially setting a limit below 10%, as it seemingly will require an analysis of the degree of liquidity of *all* securities, including potentially gradations of liquidity of Liquid Securities. The lack of guidance for this particular analysis risks

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<sup>1</sup> "In the event that changes in the money market fund's portfolio or other external events cause the fund's investments in illiquid instruments to exceed 10 percent of the fund's assets, the money market fund would have to take steps to bring the aggregate amount of illiquid securities back within the proposed limitations as soon as reasonably practicable." See the Proposing Release at pp. 11-12.

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arbitrary after-the-fact determinations that a fund failed to meet the Sufficiently Liquid Test despite full compliance with the 10% Test.

We suggest further analysis of the interplay between the 10% Test and the Sufficiently Liquid Test. Retaining the 10% Test and refraining from interposing the Sufficiently Liquid Test would, among other things, preserve a clearer bright-line test that has served to protect shareholders' interests over the years.

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We appreciate the opportunity to comment on the Proposing Release. Please feel free to contact the undersigned at (202) 887-1530 with any questions about this submission.

Sincerely,

Marco E. Adelfio