

December 21, 2021

SEC Proposes Amendments to Rules Governing Money Market Funds

Proposed Amendments to Certain Rules Under the Investment Company Act That Govern Money Market Funds are Aimed at Improving Their Resilience and Transparency.

SUMMARY

On December 15, 2021, the Securities and Exchange Commission (the “SEC”) voted 3 to 2 (Commissioners Peirce and Roisman dissenting) to propose certain amendments (the “Proposed Amendments”) to rules and forms under the Investment Company Act of 1940 (the “Investment Company Act”) intended to improve the resilience and transparency of money market funds. The Proposed Amendments come as a response to the significant outflows experienced by certain types of money market funds in March 2020 in connection with the economic shock related to the COVID-19 pandemic and the resulting intervention by the Board of Governors of the Federal Reserve System (the “Federal Reserve”).¹

This memorandum provides an overview of the Proposed Amendments, which would amend rule 2a-7 under the Investment Company Act (17 CFR 270.2a-7) to (i) remove the liquidity fee and redemption gate provisions, (ii) require swing pricing specifically for institutional prime and tax-exempt money market funds, or money market funds that are not government money market funds or retail money market funds, when the funds experience net redemptions and (iii) increase the minimum liquidity requirements applicable to money market funds to 25% daily liquid assets (up from 10%) and 50% weekly liquid assets (up from 30%). In addition, the SEC proposed additional amendments related to potential negative interest rates, the calculation of weighted average maturity (“WAM”) and weighted average life (“WAL”) and reporting requirements under Forms N-MFP and N-CR under the Investment Company Act, and to make certain conforming changes to Form N-1A to reflect the proposed changes to the regulatory framework.

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The SEC is seeking comment from the public on the Proposed Amendments, including responses to 142 specific questions included in the Release. Comments are due 60 days after the Proposed Amendments are published in the Federal Register.

BACKGROUND

Money market funds are managed with the goal of providing principal stability and access to liquidity by investing in high-quality, short-term debt securities (such as Treasury bills, repurchase agreements and commercial paper) whose value does not fluctuate significantly in normal market conditions. The combination of limited principal volatility, diversification of portfolio securities, payment of short-term yields and liquidity has made money market funds popular cash management vehicles for both retail and institutional investors. Money market funds also provide an important source of short-term financing for a variety of businesses, banks and governments.

Since rule 2a-7 was initially adopted in 1983, the SEC has amended the rule several times in response to market events that have highlighted money market fund vulnerabilities, including the 2008 financial crisis, which resulted in significant amendments to the rule in 2010. The SEC further amended rule 2a-7 in 2014 to provide, among other things, new fee and gate tools intended to stem heavy redemptions and certain requirements relating to floating net asset values (“NAV”).²

The Release notes that the growing economic concerns surrounding the COVID-19 pandemic in March 2020 led investors to reallocate their assets into cash and short-term government securities. As discussed in a report issued by the President’s Working Group on Financial Markets in December 2020 (the “PWG Report”), prime and tax-exempt money market funds, particularly institutional funds, experienced large outflows as investors sought to preserve liquidity, which contributed to stress on short-term funding markets.³ In order to slow and stabilize outflows, the Federal Reserve intervened to establish the Money Market Mutual Fund Liquidity Facility and other programs to support short-term funding markets.

The Proposed Amendments are designed in part to address concerns about prime and tax-exempt money market funds highlighted by these events.⁴ Notably, the Release acknowledges that the March 2020 market stress, including its impact on money market funds, was “more of a liquidity event” than the market stress of 2008, during which there were “heightened concerns regarding the credit quality of some money market funds’ underlying holdings.”⁵

SUMMARY OF THE PROPOSED AMENDMENTS

The SEC is proposing to amend rule 2a-7 to remove provisions in the rule that appear to have contributed to investors’ incentives to redeem from certain funds during market stress, including the tie between liquidity thresholds and fee and gate provisions, and related disclosure and reporting provisions.⁶

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In addition, for institutional prime and tax-exempt money market funds, the categories of funds that experienced the heaviest outflows in March 2020 and in prior periods of market stress, the Proposed Amendments impose a new swing pricing requirement that is designed to mitigate the dilution and harm to non-redeeming investors that may occur today when other investors redeem from these funds. The Proposed Amendments also increase daily and weekly liquid asset requirements with the goal of better equipping money market funds to manage significant and rapid investor redemptions. Furthermore, the Proposed Amendments include changes designed to improve transparency and facilitate SEC monitoring of money market funds, clarify how certain money market funds would operate if interest rates became negative and specify how funds must calculate WAM and WAL.

Over the past several years, the SEC has considered other reform options, including: (i) reform of the conditions for imposing redemption gates, (ii) minimum balance at risk, (iii) countercyclical weekly liquid asset requirements, (iv) floating NAVs for all prime and tax-exempt money market funds, (v) capital buffer requirements, (vi) requiring liquidity exchange bank membership and (vii) new requirements governing sponsor support. After considering comments on these potential reforms, which were discussed as options in the PWG Report, the SEC ultimately determined not to include them in the Proposed Amendments.⁷

Amendments to Remove Liquidity Fee and Redemption Gate Provisions

Under current rule 2a-7, a money market fund may impose liquidity fees or redemption gates (“fees and gates”) after crossing specified liquidity thresholds.⁸ Fees and gates were intended to serve as a “cooling off” period to temper the effects of short-term investor panic and preserve liquidity levels in times of market stress, as well as to allocate the costs of providing liquidity to redeeming investors. However, the SEC notes that during the period of market stress in March 2020, investor fear of the possibility of fees and, in particular, gates being imposed—although no money market fund actually imposed a fee or gate—may have contributed to incentives for investors to redeem and for money market fund managers to disadvantageously sell more illiquid assets in order to maintain weekly liquid asset levels above the specified thresholds.

As suggested by some commenters, the Proposed Amendments remove from rule 2a-7 the ability of money market funds to impose redemption gates.⁹ The SEC states, based on the experience in March 2020, that redemption gates “may not be an effective tool for money market funds to stem heavy redemptions in times of stress.”¹⁰ Under the proposal, a money market fund would continue to be able to suspend redemptions to facilitate an orderly liquidation of the fund pursuant to rule 22e-3.¹¹

In addition, the Proposed Amendments remove from rule 2a-7 the provisions allowing or requiring money market funds to impose liquidity fees once the funds cross certain liquidity thresholds.¹² Although the SEC continues to be of the view that institutional prime and tax-exempt money market funds should have a tool to cause redeeming investors to bear the costs of liquidity if they redeem during a period of stress, the SEC believes, as a general matter, that investors are “less sensitive to the possibility of bearing liquidity costs

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than they are to the possibility of redemption gates”¹³ and is concerned that the current rule would not protect remaining investors in a fund from dilution resulting from sizable outflows in times of stress.¹⁴ Therefore, the SEC is proposing mandatory swing pricing as discussed below. The Release also notes that a money market fund’s board of directors may still approve the fund’s use of redemption fees (up to but not exceeding 2% of the value of shares redeemed) to eliminate or reduce dilution of the value of the fund’s outstanding securities under rule 22c-2 of the Investment Company Act.¹⁵

Proposed Swing Pricing Requirement

The Proposed Amendments impose a swing pricing requirement specifically for institutional prime and tax-exempt money market funds that would apply when the fund experiences net redemptions.¹⁶ The swing pricing requirement is designed to ensure that the costs stemming from net redemptions are fairly allocated and do not give rise to a first-mover advantage or dilution under either normal or stressed market conditions.

Under the proposal, an institutional prime or tax-exempt money market fund would be required to adopt policies and procedures providing that the fund would adjust its current NAV per share by a swing factor reflecting spread and transaction costs, as applicable, if the fund has net redemptions for the pricing period.¹⁷ The swing pricing policies and procedures must be implemented by a board-designated administrator (the “swing pricing administrator”), and the administration of swing pricing must be reasonably segregated from portfolio management of the fund.¹⁸ In addition, the fund’s board of directors, including a majority of directors who are not interested persons of the fund, must approve the swing pricing policies and procedures and review, no less frequently than annually, a written report prepared by the swing pricing administrator.¹⁹ Under the Proposed Amendments, the fund’s board would not be permitted to delegate its responsibilities to make required determinations under the proposed swing pricing provisions.²⁰ The Proposed Amendments also include recordkeeping requirements that are consistent with the requirements in the SEC’s existing swing pricing rule (rule 22c-1).²¹

Under the Proposed Amendments, retail money market funds are not required to implement swing pricing because, among other reasons, retail funds are “less likely to have redemptions of a size that would deplete the increased liquidity buffers” that the Proposed Amendments require.²²

While acknowledging that most commenters opposed a swing pricing requirement and recognizing that investors would not know at the time of placing an order whether a fund will adjust its NAV, the SEC states that it nevertheless believes the implementation of a swing pricing regime “results in a fairer, non-dilutive pricing, particularly when there are heavy redemptions (even if the prospect of swing pricing does not materially change the level of those redemptions).”²³ The Release also acknowledges that several commenters questioned the effectiveness of swing pricing, suggesting that it may not slow investor redemptions and would not have addressed the issues that occurred in March 2020.²⁴

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The Release discusses and acknowledges the operational challenges and complexity introduced by swing pricing, particularly if an institutional money market fund does not currently impose order cut-off times.²⁵ While the SEC believes “[o]n balance” that “a swing pricing requirement has operational advantages over liquidity fees,” it is requesting comment on using an alternative liquidity fee framework to impose liquidity costs.²⁶

Amendments to Portfolio Liquidity Requirements

Currently, rule 2a-7 requires that a money market fund, immediately after acquisition of an asset, hold at least 10% of its total assets in daily liquid assets and at least 30% of its total assets in weekly liquid assets.²⁷ The SEC notes that these requirements are designed to support funds’ ability to meet redemptions from cash or securities convertible to cash even in market conditions in which money market funds cannot rely on a secondary or dealer market to provide liquidity.²⁸

The SEC states that removing the fee and gate provisions from rule 2a-7, as proposed, “could have the effect of reducing fund liquidity levels by eliminating such incentives” and, accordingly, the Proposed Amendments would increase daily and weekly liquid asset requirements to 25% and 50%, respectively.²⁹ The Proposed Amendments do not alter the current approach with respect to consequences of falling below the minimum daily and weekly liquidity requirements.³⁰ However, a fund would be required to notify its board of directors when the fund has invested less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets (a “liquidity threshold event”).³¹

The Proposed Amendments would also modify the existing periodic stress testing requirements under rule 2a-7 in light of the other Proposed Amendments to require funds to test whether they are able to maintain sufficient minimum liquidity under certain specified hypothetical events.³² Under the proposal, each fund would be required to determine the minimum level of liquidity it seeks to maintain during stress periods, identify that liquidity level in its written stress testing procedures, periodically test its ability to maintain such liquidity at such intervals as the board determines appropriate and reasonable in light of current market conditions and provide the fund’s board with a report on the results of the testing.

Other Proposed Amendments

The Release also provides for the following additional amendments:

- **Amendments Related to Potential Negative Interest Rates.** The Release notes that in a pervasive low interest rate environment, it is difficult for certain investors, particularly government money market funds, to generate substantial returns. If interest rates turn negative and the gross yield of a government or retail money market fund’s portfolio turns negative, it would be challenging or impossible for the fund to maintain a non-negative stable share price and the fund would begin to lose money.³³ Accordingly, the Release includes guidance indicating that government and retail money market funds that maintain stable NAVs must convert to a floating share price if future market conditions result in negative fund yields. Further, the Proposed Amendments expand government and retail money market funds’ obligations to confirm that they can fulfill shareholder transactions if they convert to a floating share price. Specifically, government and retail money market funds (or the principal underwriter or transfer agent on the funds’ behalf) are required to

determine that financial intermediaries that submit orders (including through an agent) to purchase or redeem the fund's shares have the capacity to redeem and sell the fund's shares at prices that do not correspond to a stable price per share. If this determination cannot be made, the Proposed Amendments would prohibit the relevant financial intermediary from purchasing the fund's shares in nominee name.³⁴ In addition, the Proposed Amendments would amend rule 2a-7 to prohibit money market funds from operating a reverse distribution mechanism, routine reverse stock split, or other device that would periodically reduce the number of the fund's outstanding shares to maintain a stable share price.³⁵

- ***Amendments to Specify the Calculation of Weighted Average Maturity and Weighted Average Life.*** To rectify inconsistencies among calculations of WAM and WAL across funds, the Proposed Amendments amend rule 2a-7 to require that money market funds calculate WAM and WAL based on the percentage of each security's market value in the portfolio.
- ***Amendments to Reporting Requirements.*** Under the Proposed Amendments, a new requirement would be added for all money market funds to file a report on Form N-CR when the fund falls below a specified liquidity threshold. Funds would also be required to file Form N-CR reports in a structured data language.³⁶ With respect to Form N-MFP, the Proposed Amendments require certain new information about a fund's shareholders and disposition of non-maturing portfolio investments. Money market funds that are not government money market funds or retail money market funds would also be required to report the number of times the fund applied a swing factor over the course of the reporting period, and each swing factor applied.³⁷ The Proposed Amendments also provide for certain conforming changes to Form N-1A to reflect the proposed changes to the regulatory framework.³⁸

Compliance Date

If the Proposed Amendments are adopted, the SEC is proposing to provide a transition period after the effective date of the amendments to give affected funds sufficient time to comply with the proposed changes and associated disclosure-reporting requirements, as described below. The Release also requests comments on the proposed compliance dates.

- ***Twelve-Month Compliance Date.*** Money market funds that are not government money market funds or retail money market funds would have 12 months from the effective date of the amendments to comply with the proposed swing pricing requirement in rule 2a-7 and the proposed swing pricing disclosures in Forms N-MFP and N-1A, if adopted. In addition, government and retail funds would have 12 months after the effective date to determine that financial intermediaries have the capacity to redeem and sell at a price based on the current net asset value per share pursuant to rule 22c-1 or prohibit the financial intermediary from purchasing securities issued by the fund in nominee name on behalf of other persons should the rule be adopted.
- ***Six-Month Compliance Date.*** All other aspects of the Proposed Amendments, if adopted, have a compliance date of six months after the effective date of the amendments. This includes the proposed increased daily minimum liquid asset and weekly minimum liquid asset requirements and the amendments to Forms N-CR and N-MFP, except the swing pricing-related disclosure on Form N-MFP.
- ***Effective Date for Amendments Related to Liquidity Fees and Redemption Gates.*** Removal of the liquidity fee and redemption gate provisions in rule 2a-7, as well as removal of associated disclosure requirements in Forms N-1A and N-CR, would be effective, if adopted, when the final rule amendments are effective.

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ENDNOTES

- 1 Money Market Fund Reforms, SEC Release No. IC-34441 (Dec. 15, 2021) (the “Release”).
- 2 For additional information on the 2010 and 2014 amendments, see Release at 9-13. The SEC also adopted amendments to rule 2a-7 in 2015 pursuant to section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act to replace references to credit ratings in the rule with alternative standards. See Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule, SEC Release No. IC-31828 (Sept. 16, 2015).
- 3 See Report of the President’s Working Group on Financial Markets, Overview of Recent Events and Potential Reform Options for Money Market Funds (Dec. 2020), *available at* <https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf>; see also Release at 14-26.
- 4 The Release notes that several of the proposed reforms were included as potential reform options in the PWG Report, on which the SEC issued a request for comment in February 2021. See Release at 18, nn.40-41.
- 5 Release at 14, n.26.
- 6 See Release at 28; see also *infra* n.10 and accompanying text.
- 7 Release at 18, n.41; see also Release at 208-264.
- 8 Specifically, under current rule 2a-7, a non-government money market fund may impose a liquidity fee of up to 2%, or temporarily suspend redemptions for up to 10 business days in a 90-day period, if the fund’s weekly liquid assets fall below 30% of its total assets and the fund’s board of directors determines that imposing a fee or gate is in the fund’s best interests. Additionally, a non-government money market fund is required to impose a liquidity fee of 1% on all redemptions if its weekly liquid assets fall below 10% of its total assets, unless the board of directors of the fund determines that imposing such a fee would not be in the best interests of the fund. The board also may determine that a lower or higher fee would be in the best interests of the fund. See 17 CFR 270.2a-7(c)(2)(ii)(A).
- 9 The Proposed Amendments also remove related disclosure and reporting provisions that require funds to disclose certain information about the possibility of fees and gates in their prospectuses and to report any imposition of fees or gates on Form N-CR, on the fund’s website and in its statement of additional information. See Items 4(b)(1)(ii) and 16(g)(1) of current Form N-1A; Parts E, F and G of current Form N-CR; 17 CFR 270.2a-7(h)(10)(v).
- 10 Release at 32. For an in-depth discussion of the unintended effects of the tie between the weekly liquid asset threshold and liquidity fees and redemption gates, see Release at 27-31.
- 11 The SEC “continue[s] to believe” that the ability to suspend redemptions in the circumstances permitted under rule 22e-3—namely if, among other conditions, (1) the fund, at the end of a business day, has invested less than 10% of its total assets in weekly liquid assets or, in the case of a government or retail money market fund, the fund’s price per share has deviated from its stable price (i.e., it has “broken the buck”) or the fund’s board determines that such a deviation is likely to occur, and (2) the fund’s board has approved the fund’s liquidation—can help address the “significant run risk and potential harm to shareholders.” Release at 32.
- 12 As a result of the expected effect of the liquidity requirement changes in the Proposed Amendments, the SEC does not believe retail prime and tax-exempt money market funds need special provisions allowing them to impose liquidity fees or other analogous tools under rule 2a-7. The SEC also points to the fact that in March 2020, no money market funds imposed liquidity fees, despite many institutional prime and tax-exempt funds experiencing significant outflows and selling portfolio holdings to meet redemptions, sometimes at a significant loss. Release at 36-39.

ENDNOTES (CONTINUED)

- 13 Release at 36.
- 14 To address this, the Proposed Amendments separately require institutional prime and tax-exempt money market funds to implement swing pricing and impose increased liquidity requirements for all money market funds, including retail funds. See *infra* at 4-5.
- 15 To the extent a money market fund's board determines that the ability to impose fees may be necessary to protect its investors, the board may establish a redemption fee approach to meet the needs of the fund, provided the fund otherwise complies with rule 22c-2 (e.g., by entering into shareholder information agreements with intermediaries) and discloses information about the redemption fee in its prospectus in compliance with Form N-1A. See Release at 40.
- 16 "Institutional funds" in the context of the proposed swing pricing requirement consist of money market funds that are not government money market funds or retail money market funds. See Release at 44, n.106.
- 17 See proposed rule 2a-7(c)(2)(ii)(A). The swing factor would reflect spread and certain other transaction costs of selling a vertical slice of the fund's portfolio. The swing factor would also include an estimate of market impact costs when net redemptions exceed a specified threshold. The proposed swing pricing requirement would not apply to net subscriptions because the SEC believes "net redemptions are more likely to contribute to dilution and other liquidity costs." Release at 47.
- 18 See proposed rule 2a-7(c)(2)(iv)(B); proposed rule 2a-7(c)(2)(vi)(e); Release at 54-55. The swing pricing administration may not include portfolio managers.
- 19 See proposed rule 2a-7(c)(2)(iv)(A)-(C). The written report prepared by the swing pricing administrator must describe: (1) its review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including their effectiveness at eliminating or reducing any liquidity costs associated with satisfying shareholder redemptions; (2) any material changes to the fund's swing pricing policies and procedures since the date of the last report; and (3) its review and assessment of the fund's swing factors and market impact threshold, including the information and data supporting the determination of the swing factors and the swing pricing administrator's determination to use a smaller market impact threshold, if applicable.
- 20 See proposed rule 2a-7(j). Rule 2a-7(j) permits a money market fund's board of directors to delegate to the fund's investment adviser or officers the responsibility to make the determinations required to be made by the board of directors under the rule, except for certain specified conditions, namely: determinations required by paragraphs (c)(1) (board findings), (c)(2) (swing pricing requirement), (f)(1) (adverse events), (g)(1) and (2) (amortized cost and penny rounding procedures) and (g)(8) (stress testing procedures) of rule 2a-7. The Release notes that "[t]he proposal, like the [SEC's] current swing pricing rule, generally contemplates a board role in compliance oversight, rather than board involvement in the day-to-day administration of the fund's swing pricing program." Release at 55-56.
- 21 See proposed rule 2a-7(h)(8); see also Release at 56.
- 22 Release at 61-62.
- 23 Release at 58. The SEC also suggests that for investors who view the potential swing factor and price adjustment as more tangible than the possibility of potential future losses during times of reduced liquidity, a swing pricing requirement may cause them to choose not to redeem. See Release at 57-58.
- 24 Release at 56-57.
- 25 Release at 74-75.
- 26 Release at 61.

ENDNOTES (CONTINUED)

- 27 See 17 CFR 270.2a-7(d)(4)(ii) and (iii). Tax-exempt money market funds are not subject to the daily liquid asset requirements due to the nature of the markets for tax-exempt securities and the limited supply of securities with daily demand features. See Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) at n.243 and accompanying text.
- 28 Release at 87.
- 29 Release at 88. The SEC created hypothetical portfolios and stress tested them using the redemption patterns of institutional prime funds from March 16 to 20, 2020, when prime money market funds experienced their heaviest outflows, to aid in the determination of new daily and weekly liquid asset thresholds. See Release at 92-93.
- 30 Under current rule 2a-7, if a portfolio does not meet the minimum liquidity standards, the fund may not acquire any assets other than daily liquid assets or weekly liquid assets, respectively, until it meets the minimum thresholds. The SEC decided against imposing a new regulatory penalty when a fund drops below a minimum liquidity threshold, noting that it “could have the unintended effect of incentivizing some fund managers to sell less liquid assets into a declining market rather than use their excess liquidity during market stress events.” Release at 101-03.
- 31 Under the Proposed Amendments, the fund must notify the board within one business day of the liquidity threshold event and provide a brief description of the facts and circumstances that led to the liquidity threshold event within four business days after its occurrence. See proposed rule 2a-7(f)(4); Release at 103.
- 32 See proposed rule 2a-7(g)(8)(i) and (g)(8)(ii)(A).
- 33 For a discussion of the issues surrounding potential negative interest rates, see Release at 107-109.
- 34 See proposed rule 2a-7(h)(11)(ii). This proposed requirement would apply to each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the money market fund, its principal underwriter or transfer agent, or to a registered clearing agency. The term “financial intermediary” has the same meaning as in 17 CFR 270.22c-2(c)(1). See proposed rule 2a-7(h)(11)(iv).
- 35 See proposed rule 2a-7(c)(3). The SEC notes that this change is motivated by the “potentially misleading or confusing nature of the reverse distribution mechanism.” Release at 113.
- 36 Additional amendments to Form N-CR intended to improve the utility of reported information and remove reporting requirements related to the imposition of liquidity fees and redemption gates under rule 2a-7 are also contemplated under the proposal, among other changes. For additional information about amendments to Form N-CR, see Release at 119-27.
- 37 Furthermore, for purposes of reporting the fund’s schedule of portfolio securities in Part C of Form N-MFP, the Proposed Amendments provide that filers must provide required information separately for the initial acquisition of a security and any subsequent acquisitions of the security (i.e., for each lot), among other changes. For additional information about amendments to Form N-MFP, see Release at 127-45.
- 38 See *supra* n.9.

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