ONPOINT / A legal update from Dechert's Financial Services group

SEC Proposes New Round of Money Market Fund Reforms in Response to March 2020 Redemptions

Authored by Stephen T. Cohen, Brenden P. Carroll, James V. Catano, Megan C. Johnson, Neema Nassiri, Kathleen Hyer, Mary Anne Morgan and Devon M. Roberson

January 2022

SEC Proposes New Round of Money Market Fund Reforms in Response to March 2020 Redemptions

January 2022 / Authored by Stephen T. Cohen, Brenden P. Carroll, James V. Catano, Megan C. Johnson, Neema Nassiri, Kathleen Hyer, Mary Anne Morgan and Devon M. Roberson

The Securities and Exchange Commission, by a vote of three-to-two, on December 15, 2021, proposed amendments (Proposed Amendments) to Rule 2a-7 and other rules that govern money market funds (money funds) under the Investment Company Act of 1940.[1] The Proposed Amendments would substantially raise minimum liquidity levels for all money funds; remove liquidity fee and redemption gate provisions from Rule 2a-7; impose a new swing pricing regime for non-government institutional money funds (*i.e.*, institutional prime and institutional tax-exempt money funds); require money funds to calculate their weighted average maturity (WAM) and weighted average life (WAL) using the market values of their portfolios securities; and amend certain reporting requirements in Forms N-MFP and N-CR. The Proposed Amendments also would set forth the SEC's view that it would be inappropriate for a stable net asset value (NAV) money fund with a gross negative yield to continue to seek to maintain a stable NAV.

The Proposed Amendments represent the most significant effort by the SEC to reform the money fund industry since the series of reforms it adopted following the 2007-2008 financial crisis. Similar to those reforms, the Proposed Amendments attempt to respond to significant market events and the SEC's understanding of the roles and vulnerabilities of money funds during such events. Specifically, the SEC stated in the proposing release (Release) that the Proposed Amendments are "designed to improve the resiliency and transparency of money market funds" in response to the stresses experienced in March 2020, when the onset of the COVID-19 coronavirus pandemic led to substantial redemptions primarily from non-government institutional money funds, as well as the associated stresses experienced in the asset classes in which such funds invest (*i.e.*, in the short-term credit markets). The Release describes how these stresses ultimately led to intervention by the Federal Reserve in support of money funds and the proper functioning of the short-term credit markets.[2] In addition, the Release notes that the Proposed Amendments are based in part on the SEC's consideration of public comments it received in connection with the report issued by the President's Working Group on Financial Markets in December 2020 (PWG Report), which discussed the events of March 2020 and potential money fund reform options.[3] The Proposed Amendments could have a significant impact

---

1 Money Market Fund Reforms, Release No. IC-34441 (Dec. 15, 2021). The three Democratic Commissioners, Chairman Gary Gensler, Commissioner Allison Herren Lee and Commissioner Caroline A. Crenshaw, voted to approve the Proposed Amendments, whereas the two Republican Commissioners, Commissioner Hester M. Peirce and Commissioner Elad L. Roisman, dissented.

2 *See id.* at Section I.B. The Federal Reserve, with approval of the Department of Treasury, established the Money Market Mutual Fund Liquidity Facility (MMLF) on March 18, 2020, to provide eligible financial institutions with loans secured by high-quality assets purchased by the financial institution from money funds.

3 Report of the President's Working Group on Financial Markets, Overview of Recent Events and Potential Reform Options for Money Market Funds (Dec. 2020). For further information, please refer to *Dechert OnPoint*, President's Working Group on Financial Markets Issues Report on Money Market Fund Reform Options. Notably, among the commenters to the PWG Report was William Birdthistle, who was appointed Director of the SEC's Division of Investment Management on December 21, 2021. In his comment to the PWG Report, Mr. Birdthistle suggested that the SEC should consider adopting three types of potential money fund reforms: all money funds should have floating NAVs; money funds and their sponsors should be subject to bank-like capital buffer requirements; and/or the money fund industry should develop an emergency collective insurance fund. *See* Comment In Response to Request for Comment on Potential Money Market Fund Reform Measures in President's Working Group Report, David Zaring and William Birdthistle. It is unclear what impact Mr. Birdthistle's recent appointment as the Director of the Division of Investment Management could have on the final amendments, if adopted.

on money funds and the markets in which they invest. The Proposed Amendments also raise potential issues for money fund boards of directors, service providers, intermediaries and investors. Moreover, the new swing pricing regime for non-government institutional money funds might fundamentally impact whether such funds can continue to be utilized by certain investors for cash management purposes. This *Dechert OnPoint* provides an overview the Proposed Amendments and their applicability to categories of money funds, and then discusses each of the Proposed Amendments in more detail.

	Government money funds	Prime money funds		Tax-exempt money funds	
		Institutional	Retail	Institutional	Retail
Removal of liquidity fee and redemption gate provisions	N/A[4]	✓	✓	✓	✓
Swing pricing requirement	N/A	✓	N/A	✓	N/A
Increase in daily and weekly liquid asset requirements	✓	✓	✓	✓ [5]	✓ [5]
Amendments related to potential negative interest rates	✓	N/A	✓	N/A	✓
WAM and WAL calculation specifications	✓	✓	✓	✓	✓
Form N-CR and Form N-MFP reporting enhancements	✓	✓	✓	✓	✓

- **Removal of Liquidity Fee and Redemption Gate Provisions.** The Proposed Amendments would remove provisions in Rule 2a-7 that permit (or under certain circumstances require) a money fund to impose liquidity fees. The Proposed Amendments also would remove provisions in Rule 2a-7 that permit a money fund to impose a redemption gate. In the SEC's view, the possibility of the imposition of a redemption gate and, to a lesser extent, liquidity fees might have contributed to investor redemptions in March 2020 and incentivized money fund managers to raise liquidity by selling less-liquid assets.

- **Swing Pricing Requirement.** The Proposed Amendments would require an institutional prime or institutional tax-exempt money fund to implement board-approved policies and procedures that require the fund to adjust its NAV per share downward by a "swing factor" when it experiences net redemptions during a "pricing period." In determining the "swing factor," the fund's "swing pricing administrator" would make good

4 Under current Rule 2a-7, a government money fund is permitted, but not required, to implement liquidity fees and/or redemption gates. In practice, almost all government funds have chosen not to opt into liquidity fee and/or redemption gate implementation.

5 Similar to current Rule 2a-7, a tax-exempt money fund would not to be subject to daily liquid asset requirements under the Proposed Amendments.

faith estimates, supported by data, of the costs the fund would incur if it sold a *pro rata* amount of each security in the fund's portfolio (*i.e.*, a "vertical slice" of the portfolio) to satisfy the amount of net redemptions for the pricing period. Further, if net redemptions exceed the "market impact threshold," which would generally be 4% of the fund's NAV, then the good faith estimates also must include, for each security in the fund's portfolio, market impacts.

- **Increase in Daily and Weekly Liquid Asset Requirements.** The Proposed Amendments would increase minimum daily liquid asset requirements from 10% to 25% and weekly liquid asset requirements from 30% to 50% for all money funds. (Similar to current Rule 2a-7, a tax-exempt money fund would not be subject to daily liquid asset requirements.) A money fund would be required to notify its board if the percentage of its total assets in daily liquid assets or weekly liquid assets falls below 12.5% or 25%, respectively.

- **Amendments Related to Potential Negative Interest Rates.** The Release discusses how stable NAV money funds might respond to negative interest rates. Specifically, the Release indicates that the SEC might view it as generally inappropriate under the existing provisions of Rule 2a-7 for a stable NAV money fund with a gross negative yield to continue to seek to maintain a stable NAV. Accordingly, the Proposed Amendments would amend Rule 2a-7 to expressly prohibit a stable NAV money fund from reducing the number of its shares outstanding to maintain a stable share price (*e.g.*, through a reverse distribution mechanism or a routine reverse stock split). Additionally, the Proposed Amendments would require a stable NAV money fund to determine that its financial intermediaries are able to process share transactions if the fund converts to a floating NAV, and, if not, to prohibit those financial intermediaries from purchasing the fund's shares in nominee name.

- **WAM and WAL Calculation Specifications.** The Proposed Amendments would specify that a money fund must calculate the WAM and WAL of its portfolio using weightings based on the percentage of each security's market value in the portfolio.

- **Form N-CR and Form N-MFP Reporting Enhancements.** Under the Proposed Amendments, a money fund would be required to publicly file a report on Form N-CR if the percentage of its total assets in daily liquid assets or weekly liquid assets falls below 12.5% or 25%, respectively. The Proposed Amendments also include several new disclosure items in Form N-MFP.

Each of these Proposed Amendments is discussed in more detail below.

Removal of Liquidity Fee and Redemption Gate Provisions

The Proposed Amendments would remove provisions in current Rule 2a-7 that permit (or under certain circumstances require) a money fund to impose liquidity fees. The Proposed Amendments also would remove provisions in current Rule 2a-7 that permit a money fund to impose a redemption gate (*i.e.*, a temporary suspension of redemptions).

Currently, Rule 2a-7 permits a money fund to impose liquidity fees and/or redemption gates if the fund's weekly liquid assets fall below a certain threshold. Specifically, if a money fund's weekly liquid assets fall below 30% of its total assets, the money fund is permitted to impose a liquidity fee of up to 2% on all redemptions and/or a redemption gate for up to 10 business days in a 90-day period, provided that the fund's board determines that the imposition of the liquidity fee and/or redemption gate is in the fund's best interests. In addition, Rule 2a-7 currently requires a non-government money fund to impose a liquidity fee of 1% on all redemptions if its weekly liquid assets fall below 10% of

its total assets, unless the fund's board determines that the liquidity fee would not be in the fund's best interests (or that a lower or higher fee would be in the fund's best interests).

As described in the Release, the SEC originally intended that these provisions would provide a "cooling off" period to "temper the effects of a short-term investor panic and preserve liquidity levels in times of market stress," as well as to enable money funds to better allocate liquidity costs incurred by redeeming investors. However, the SEC acknowledges in the Release that, in March 2020, these provisions "did not have their intended effect" and that the possible imposition of liquidity fees and/or redemption gates instead "appears to have contributed to investors' incentives to redeem from prime money market funds and for money market fund managers to maintain weekly liquid asset levels above the [30% weekly liquid asset] threshold, rather than use those assets to meet redemptions." In particular, the Release discusses how these incentives might have been created by investors viewing the 30% weekly liquid asset threshold as a bright line prompting redemptions, as well as how some money fund managers thus sold longer-dated, less-liquid portfolio securities to avoid approaching this threshold. The selling activity that resulted might have contributed, in turn, to downward pricing pressures on these securities and the associated stresses experienced in the short-term credit markets. In recognition of these unintended effects of the liquidity fee and redemption gate provisions, the Proposed Amendments would remove them from Rule 2a-7 altogether.[6]

Nonetheless, with respect to liquidity fees, it is the SEC's view that institutional prime and institutional tax-exempt money funds continue to need a mechanism that can effectively cause redeeming shareholders to bear the liquidity costs associated with their redemptions. In this respect, the Proposed Amendments would require these types of money funds to implement swing pricing, which, unlike the current liquidity fee regime, would be designed to allocate liquidity costs in a fund's normal course of operations, without the need for special board action, as discussed in the following section.

The removal of the liquidity fee and redemption gate provisions from Rule 2a-7 was supported to a certain extent by all of the Commissioners during the open meeting considering the Proposed Amendments. However, Commissioners Peirce and Roisman questioned – and the SEC has requested comment on – whether a money fund's board should be allowed to consider imposing liquidity fees and redemption gates voluntarily as an additional tool intended to stem redemptions, as opposed to removing these tools altogether.

Swing Pricing Requirement

In tandem with the proposed elimination of money funds' ability to impose liquidity fees under Rule 2a-7, the Proposed Amendments would impose a mandatory swing pricing regime as an alternate method for institutional prime and institutional tax-exempt funds to allocate redemption costs to redeeming investors. Unlike liquidity fees, swing pricing would be applied in the normal course of operations whenever these money funds experience net redemptions, without requiring specific action from their boards. According to the Release, this mandatory swing pricing regime "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," and also would

---

[6] The Proposed Amendments would not impact a money fund's ability to suspend redemptions pursuant to Rule 22e-3 under the Investment Company Act in order to facilitate an orderly liquidation. The Proposed Amendments also would not impact a money fund's ability to impose redemption fees to eliminate or reduce, as practicable, a dilution of the fund's outstanding securities (including dilution arising from shareholder transaction activity generally, pursuant to Rule 22c-2 under the 1940 Act).

"address a fund's potential reluctance to impose a voluntary liquidity fee even when doing so might be beneficial to the fund."

Specifically, the Proposed Amendments would require an institutional prime or institutional tax-exempt money fund to implement policies and procedures that require the fund to adjust its NAV per share downward by a "swing factor" when it experiences net redemptions (calculated across all of the fund's share classes in the aggregate) during a "pricing period." In determining the "swing factor," the fund's swing pricing administrator would make good faith estimates, supported by data, of the spread costs and other transaction costs (*i.e.*, brokerage commissions, custody fees, other charges, fees and taxes associated with the portfolio security sales) that the fund would incur if it sold a *pro rata* amount of each security in the fund's portfolio (*i.e.*, a "vertical slice" of its portfolio) in order to satisfy the amount of net redemptions for the "pricing period." A "pricing period" would be defined for this purpose as the period of time in which an order to purchase or sell securities issued by the fund must be received to otherwise be priced at the next-computed NAV. The Proposed Amendments would not set a lower or upper limit to a fund's swing factor.

Further, if net redemptions for a pricing period exceed the "market impact threshold," then the good faith cost estimates must also include, for each security in the fund's portfolio, market impacts. The "market impact threshold" would be defined as the amount of net redemptions for a pricing period that equals the value of 4% of the fund's NAV divided by the number of pricing periods the fund has in a business day (or such smaller amount of net redemptions as the fund's swing pricing administrator determines). Market impacts would be estimated by first estimating a security's "market impact factor," which represents the percentage decline in the value of the security if it were sold under current market conditions. The fund would then determine market impacts by multiplying the market impact factor by the dollar amount of the security that would be sold if the fund sold a *pro rata* amount of each security in its portfolio to meet the net redemptions for the pricing period. Notably, the Proposed Amendments would permit funds to estimate costs and the market impact factor with respect to each type of security "with the same or substantially similar characteristics," as opposed to requiring funds to analyze each security on a separate, individualized basis.

The Release summarizes the swing pricing process into the following steps:

STEP 1	Did the money fund have net redemptions during the pricing period?	If **NO**, do not apply a swing factor If **YES**, proceed to **Step 2**.
STEP 2	Did the net redemptions during the pricing period exceed the market impact threshold?	If **NO**, apply a swing factor that includes spread costs (if the fund uses midmarket pricing) and other transactions costs of selling a vertical slice of the fund's portfolio. If **YES**, apply a swing factor that includes spread costs (if the fund uses midmarket pricing), other transactions costs and the market impact factor of selling a vertical slice of the fund's portfolio.

Under the Proposed Amendments, institutional prime and institutional tax-exempt money funds would be required to develop and adopt swing pricing policies and procedures that must be approved by the fund's board (and reviewed and approved by the board at least annually thereafter). The fund's board also would be required to designate the swing pricing administrator and to review, no less frequently than annually, a written report prepared by the swing

pricing administrator.[7] The swing pricing administrator could be the fund's investment adviser or officer(s) responsible for administering the fund's swing pricing policies and procedures.

In the Release, the SEC explains that the swing pricing regime would be mandatory due, in part, to the SEC's belief that institutional money funds might have been unduly reluctant to implement liquidity fees during the March 2020 liquidity stresses, as well as the belief that a voluntary mechanism would create "a collective action problem in which no fund would want to be the first to adopt" swing pricing. The Release contends that the swing pricing requirement would not itself serve to incentivize investors to seek a first-mover advantage and engage in run-like behavior, because investors generally would not know whether a fund has experienced net redemptions during a pricing period and, in any case, would not know the size of the swing factor for that period. The SEC acknowledged, however, that the swing pricing requirement could impact investor interest in institutional money funds and cause certain investors to allocate their assets instead to government money market funds, which the SEC noted "may be a better match for investors unwilling to bear liquidity costs."

The Release acknowledges that swing pricing will introduce new operational complexity to institutional money funds. In particular, the Release attempts to respond to issues raised by commenters to the PWG Report regarding the impracticability of swing pricing for U.S. money funds. Namely, in the United States, money funds typically receive their flow information from intermediaries with a delay, whereas timely flow information would be necessary to inform swing pricing decisions and to apply the swing factor to a fund's NAV prior to processing shareholder transactions.[8] This issue is heightened for money funds that strike their NAV multiple times per day, as these funds correspondingly would need to receive flow information sufficiently timely to calculate and apply a swing factor multiple times per day. This also may be challenging for money funds that offer same-day settlement, as these funds might need to impose earlier cut-off times for intraday orders to ensure that they receive their flow information prior to striking their final NAV of the day. Currently, complete order flow information might not be available to a fund until overnight settlement occurs. Notwithstanding these significant operational complexities posed by the proposed swing pricing requirement, the Release reflects the SEC's belief that, "[a]s a general matter, to the extent these operational changes are necessary, ... they are warranted to address investor harm and dilution that occurs when redeeming investors reduce the fund's liquidity and impose other costs on remaining investors."

Notably, the proposed swing pricing requirement would differ in important respects from the optional swing pricing regime for open-end funds (other than exchange-traded funds and money funds) pursuant to Rule 22c-1 under the 1940 Act. In particular, unlike the optional swing pricing regime currently permitted under Rule 22c-1, swing pricing for non-government institutional money funds under the Proposed Amendments would be applied whenever there are net redemptions, instead of being triggered only when net redemptions reach a certain percentage of the fund's NAV (*i.e.*, a "swing threshold"). Additionally, unlike Rule 22c-1, there would be no cap to the swing factor under the

---

7 Under the Proposed Amendments, reports from the swing pricing administrator to the board would be subject to a six-year recordkeeping requirement.

8 As noted in the Release, some commenters to the PWG Report highlighted that, although European money funds have used swing pricing successfully for several years, U.S. money funds face a fundamentally different operational infrastructure that would challenge the replication of that success in the United States. Certain unique features of the operational infrastructure for European money funds (*e.g.*, "earlier trading cut-off times, greater use of currency-based orders versus share- or percentage-based transactions, and more direct-sold funds") generally permit them to accurately estimate and/or actually receive flow information before the time they strike their NAVs.

Proposed Amendments, swing pricing would not apply upward to net subscriptions and, under certain circumstances, swing pricing could include market impact costs, which the SEC previously declined to include in Rule 22c-1.[9]

The SEC has posed extensive questions for commenters regarding the proposed swing pricing requirement,[10] including whether:

- Swing pricing should be required only when net redemptions exceed a certain percentage of a fund's total assets;
- Market impact thresholds should be determined on a fund-by-fund basis;
- Affiliated money funds used to manage cash across an advisory complex should be excluded from the swing pricing requirement;
- The operational implications of swing pricing would be feasible for funds that strike NAV multiple times per day or that offer intraday liquidity and/or same-day settlement; and
- Money fund intermediaries would be able to implement swing pricing with operational changes.

A potential consequence of implementing swing pricing could be to further increase consolidation in the money fund industry, in light of the operational complexities and costs that would result from swing pricing. Additionally, large shareholders might be disincentivized from investing in a smaller money fund, where the size of their redemptions could more easily cause the fund to experience net redemptions and lead to a reduced NAV when such shareholders redeem their shares due to the application of swing pricing.

Increase in Daily and Weekly Liquid Asset Requirements

The Proposed Amendments would increase a money fund's minimum daily liquid asset requirements from 10% to 25% and weekly liquid asset requirements from 30% to 50% of its total assets.[11] Consistent with the existing regulatory requirements, if a money fund's portfolio does not meet the minimum daily liquid asset or weekly liquid asset thresholds set forth in the Proposed Amendments, the fund would not be able to acquire any assets other than daily liquid assets or weekly liquid assets, respectively, until it meets these minimum thresholds. However, a money fund would be required to notify its board and publicly file a report on Form N-CR if the percentage of its total assets in daily liquid assets or weekly liquid assets falls below 12.5% or 25%, respectively. Although the increased daily and weekly liquid asset thresholds under the Proposed Amendments would apply to all money funds, including government money funds, these changes are not expected to significantly impact government money funds.

---

9 Notwithstanding these current differences between swing pricing under the Proposed Amendments and swing pricing under Rule 22c-1, the Release notes that Division of Investment Management might be considering recommending future regulatory requirements relating to open-end funds' liquidity and dilution management, which could include changes to Rule 22c-1. *See* Money Market Fund Reforms, *supra* note 1, at n. 107 ("We are proposing a swing pricing requirement specifically for institutional funds in rule 2a-7, rather than proposing amendments to rule 22c-1, because we are focused on money market fund reform in this release. The Fall 2021 Unified Agenda notes that the Division of Investment Management is considering recommending changes to regulatory requirements relating to open-end funds' liquidity and dilution management.").

10 The Release indicates that "most commenters [to the PWG Report] opposed a swing pricing requirement." The two commenters that supported a swing pricing requirement were not funds or fund sponsors.

11 Tax-exempt money funds, however, would continue to not to be subject to the daily liquid asset requirements of Rule 2a-7.

Government money funds are already required to invest 99.5% of their total assets in cash, government securities and/or repurchase agreements that are collateralized fully, which generally qualify as daily and weekly liquid assets under Rule 2a-7.

In connection with these changes, the Proposed Amendments would no longer require a money fund to stress test its ability to have at least 10% of its total assets in weekly liquid assets. Instead, a money fund would itself determine the minimum level of liquidity it seeks to maintain during stress periods, which the SEC observes might vary between different types of money funds or funds with different types of investors.

The SEC describes these changes as intended to provide money funds with a more substantial liquidity buffer, so that they can better withstand the level of rapid investor redemptions that were experienced in March 2020. However, the SEC acknowledges concerns – and seeks comments regarding – whether these changes could negatively impact yields, especially for prime money funds, and potentially reduce investor interest such funds.

Amendments Related to Potential Negative Interest Rates

In the face of questions concerning how stable NAV money funds (which include government money funds and retail money funds) might continue to operate in a potential negative interest rate environment, the Release indicates that, as a general matter, the SEC believes it might be inappropriate under the existing provisions of Rule 2a-7 for a stable NAV money fund with a gross negative yield to continue to seek to maintain a stable NAV. In particular, the Release states that "if negative interest rates turn a stable NAV fund's gross yield negative, the board may reasonably believe the stable share price does not fairly reflect the market-based price per share, as the fund would be unable to generate sufficient income to support a stable share price." Under these circumstances, "the fund would need to convert to a floating share price." Additionally, "the board of a stable NAV fund could reasonably require the fund to convert to a floating share price to prevent material dilution or other unfair results to investors or current shareholders." Importantly, the SEC's focus on a gross negative yield as opposed to a net negative yield suggests that the SEC might not object to a fund that maintained a stable NAV by virtue of the waiver of certain fees and expenses.

To reflect the SEC's view with respect to addressing negative fund yields for stable NAV money funds, the SEC proposes to amend Rule 2a-7 to prohibit stable NAV money funds from implementing: a reverse distribution mechanism; routine reverse stock split; or other device that periodically would reduce the number of the fund's outstanding shares in order to maintain a stable share price. Specifically, the Proposed Amendments would prohibit a stable NAV money fund from "reduc[ing] the number of its shares outstanding to seek to maintain a stable net asset value per share or stable price per share."[12]

Relatedly, the Proposed Amendments would require a stable NAV money fund to determine that its financial intermediaries "[have] the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to [Rule 22c-1]." That is, under the Proposed Amendments, a stable NAV money fund must determine that its intermediaries are able to continue processing its share transactions in the event that the fund converts to a floating NAV. Otherwise, the money fund would be required to prohibit the relevant financial intermediaries from purchasing its shares on behalf of other persons in nominee name. Importantly, this proposal could have the effect of reducing assets in stable NAV money funds, if there are intermediaries unable to

---

12 The Release does not indicate that this prohibition is intended to prevent a floating NAV money fund (including a fund that previously had converted from a stable NAV to a floating NAV) from converting to a stable NAV.

accommodate investments at a floating NAV per share. For example, sweep platforms and certain other legacy systems have been built to accommodate only a $1.00 share price due to limitations in the intermediaries' own accounting systems and changes to those systems may too be costly or difficult to update to accommodate a floating NAV per share.

WAM and WAL Calculation Specifications

Under the Proposed Amendments, a money fund would be required to calculate the weighted average maturity and weighted average life of its portfolio using weightings based on the percentage of each security's market value in the portfolio. Current Rule 2a-7 does not specify whether a fund should use a security's market value or its amortized cost for weighting purposes. The Release indicates that, as a result of this ambiguity, under current Rule 2a-7, the SEC has observed discrepancies and inconsistencies in WAM and WAL calculations across funds and in the data provided to the SEC. According to the Release, the SEC believes that this change "will enhance the consistency of calculations for funds, while allowing the Commission to better monitor and respond to indicators of potential risk and stress in the market."

Form N-CR and Form N-MFP Reporting Enhancements

Under the Proposed Amendments, a money fund would be required to file a report on Form N-CR if the percentage of its total assets in daily liquid assets or weekly liquid assets falls below 12.5% or 25%, respectively. The money fund would be required to file the report on Form N-CR within one business day of such a "liquidity threshold event." This report would include: the date on which the fund's assets fell below the specified thresholds; and the level of both weekly and daily liquid assets on that date. Within four business days after the event, the fund would be required to file an updated report that includes a brief description of the circumstances that led to the fund's assets falling below the applicable thresholds.

The Proposed Amendments also would add several new disclosure items to Form N-MFP. First, to assist monitoring a fund's risk of redemptions from a small number of individual investors, the Proposed Amendments would require money funds disclose the name and percentage ownership of any person that owns more than 5% of the shares of any share class of a money fund. Second, for a non-government institutional money fund, the Proposed Amendments would require the fund to identify the percentage of investors belonging to certain categories of investors (*e.g.*, non-financial corporations, pension plans and other categories). Third, the Proposed Amendments would add a new Part D to Form N-MFP to require disclosure of the amount of portfolio securities a prime money market fund sold or disposed of during the relevant month, excluding securities held until maturity. Further, the Proposed Amendments would amend Form N-MFP to require a non-government institutional money fund to disclose the number of times it applied a swing factor during the reporting period, as well as each swing factor applied.

Compliance Dates

The SEC proposes that money funds be required to comply with the Proposed Amendments, if adopted, on the following timeline:

- Twelve months after the effective date of the Proposed Amendments, money funds would be required to comply with the swing pricing requirement and the requirement that stable NAV money funds determine that financial intermediaries which submit orders to buy or sell shares are able to transact at a floating NAV;

- Six months after the effective date, money funds would be required to comply with all other aspects of the Proposed Amendments, including the increased daily and weekly liquid assets thresholds and the amendments to Forms N-CR and N-MFP; and

- Immediately upon the effective date of the Proposed Amendments, the provisions regarding liquidity fees and redemption gates would be removed from Rule 2a-7.

Notably, the Proposed Amendments would leave a 12-month gap between the removal of the liquidity fee and redemption gate provisions of Rule 2a-7 and the imposition of the swing pricing requirement.

Conclusion

The Proposed Amendments represent the latest effort by the SEC to reform the rules governing money funds since the series of reforms it adopted following the 2007-2008 financial crisis. Similar to those reforms, the Proposed Amendments attempt to respond to significant market events – in particular, the perceived liquidity stresses of March 2020 – and the SEC's understanding of the roles and vulnerabilities of money funds during such events.

It is critical that stakeholders provide their views to the SEC during the 60-day public comment period for the Proposed Amendments. The 60-day public comment period will begin with the publication of the Proposed Amendments in the Federal Register, which, as of the date of this *OnPoint*, has not occurred. This relatively short comment period was described as “a major shortcoming” by Commissioner Roisman. For context, the SEC provided a 90-day comment period in connection with its proposed money market fund reforms in 2013.

This update was authored by:

Stephen T. Cohen
Partner
Washington, D.C.
+1 202 261 3304
stephen.cohen@dechert.com

Brenden P. Carroll
Partner
Washington, D.C.
+1 202 261 3458
brenden.carroll@dechert.com

James V. Catano
Partner
Washington, D.C.
+1 202 261 3376
james.catano@dechert.com

Megan C. Johnson
Partner
Washington, D.C.
+1 202 261 3351
megan.johnson@dechert.com

Neema Nassiri
Associate
New York
+1 212 641 5633
neema.nassiri@dechert.com

Kathleen Hyer
Associate
Washington, D.C.
+1 202 261 3471
kathleen.hyer@dechert.com

Mary Anne Morgan
Associate
Washington, D.C.
+1 202 261 3473
maryanne.morgan@dechert.com

Devon M. Roberson
Associate
Washington, D.C.
+1 202 261 3477
devon.roberson@dechert.com

© 2022 Dechert LLP. All rights reserved. This publication should not be considered as legal opinions on specific facts or as a substitute for legal counsel. It is provided by Dechert LLP as a general informational service and may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome. We can be reached at the following postal addresses: in the US: 1095 Avenue of the Americas, New York, NY 10036-6797 (+1 212 698 3500); in Hong Kong: 27/F Henley Building, 5 Queen's Road Central, Hong Kong (+852 3518 4700); and in the UK: 160 Queen Victoria Street, London EC4V 4QQ (+44 20 7184 7000). Dechert internationally is a combination of separate limited liability partnerships and other entities registered in different jurisdictions. Dechert has more than 900 qualified lawyers and 700 staff members in its offices in Belgium, China, France, Germany, Georgia, Hong Kong, Ireland, Kazakhstan, Luxembourg, Russia, Singapore, the United Arab Emirates, the UK and the US. Further details of these partnerships and entities can be found at dechert.com on our Legal Notices page.