April 12, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Request for Comment on Potential Money Market Fund Reform Measures in President's Working Group Report (File No. S7–01–21), issued by the Securities and Exchange Commission ("SEC" or "Commission")

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-captioned release ("Request" or "Release").[2] In the Release, the Commission seeks input on a list of possible reforms in the regulation of money market funds ("MMFs"). That list of options was put forth in a December 2020 report issued by the President's Working Group ("PWG").[3] The specific purpose of the Request is to "help inform consideration of reforms to improve the resilience of money market funds and broader short-term funding markets."[4]

The Releases is an encouraging sign that the Commission will soon embark on a rulemaking that could fully and finally address the risks that MMFs pose to the financial system. The task of implementing broader and more effective regulatory requirements governing MMFs is vitally important and long overdue. The shortcomings in the regulation of MMFs were revealed in stark detail in 2008, when the collapse of Lehman Brothers precipitated a crisis in the MMF sector that resulted in a massive government bailout and backstop. Less than 12 years later, the MMF marketplace again faced a crisis that required rapid government action and massive government support, as a result of the COVID-19 induced financial turmoil and economic downturn in March last year. At this point, it is beyond any reasonable dispute that the SEC's piecemeal reforms in 2010 and 2014 were inadequate to the task of ensuring the long-term stability of MMFs, and it is equally clear that comprehensive MMF reform is

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.
2 86 Fed. Reg. 8938 (Feb. 10, 2021).
3 Release at 8939.
4 *Id.* at 8938.

critically important to make the financial system safer and to reduce the likelihood that future taxpayer bailouts will be necessary.

Moreover, enhanced regulation of MMFs is not only essential but also fair and appropriate. For years, MMFs, their sponsors, and investors have enjoyed what is in essence a regulatory free ride at the expense of U.S. taxpayers. They have benefited from a unique combination of product features, including elevated yields coupled with the convenient cash management features of a bank product. Yet those elevated yields come as a direct consequence of the fact that MMFs do not have to shoulder the costs of deposit insurance or equivalent measures that would better protect them from the risk of failure in times of economic turmoil—risks that U.S. taxpayers have had to pay for twice in just the last 12 years. Adequate regulation of MMFs could not only mitigate the risks they pose but could also appropriately reallocate the costs of managing those risks from the American taxpayer to the industry, where it belongs.

BACKGROUND

The 2008 Financial Crisis and the Reserve Primary Fund

The financial crisis made it painfully clear that MMFs present a serious risk of systemically significant runs and that those runs can cripple the short-term credit markets, potentially tipping the entire financial system into chaos. In the most compelling example of MMF run risk, the Reserve Primary Fund broke the buck on September 19, 2008, due to losses on debt instruments issued by Lehman Brothers Holdings, Inc. This tumultuous event occurred even though Lehman-related assets comprised only 1.2 percent of the fund's total assets. When the fund sponsors declined to provide support, a run immediately ensued. Within two days, investors sought to redeem $40 billion from the fund.

This required the fund to sell tens of billions of dollars in assets immediately so that it could pay for the flood of shareholder redemptions. This fire sale in turn depressed asset values, further weakening the fund. The run quickly spread to the entire prime MMF industry, and during the week of September 15, 2008, investors withdrew approximately $310 billion (or 15 percent) of prime MMF assets. This caused immediate havoc in the short-term funding markets, triggering a vicious cycle of asset fire sales, depressed prices, redemption requests, more asset fire sales, and rapidly evaporating liquidity. The run abated only after the Treasury, on September 19, 2008, established the Temporary Guarantee Program for Money Market Funds, and the Federal Reserve established a variety of facilities to support the credit markets frozen by the MMF crisis.[5]

Notwithstanding this unprecedented and massive intervention in what was then a $3.7 trillion market, the September 2008 run resulted in large and rapid disinvestment by MMFs in short-term instruments, "which severely exacerbated stress in already strained financial markets."[6] The decline in outstanding commercial paper contributed to a sharp rise in borrowing costs for commercial paper issuers.[7] In addition, while the losses ultimately sustained by investors in the Reserve Primary Fund were

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5 *See* SEC DIVISION OF RISK, STRATEGY, AND FINANCIAL INNOVATION, RESPONSE TO QUESTIONS POSED BY COMMISSIONERS AGUILAR, PAREDES, AND GALLAGHER, at 12 (Nov. 30, 2012), http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf.

6 FSOC, Proposed Recommendations Regarding Money Market Mutual Fund Reform, 77 Fed. Reg. 69,455, 69,464 (Nov. 19, 2012) ("FSOC Proposal").

7 *See generally* FSOC Proposal, at 69,458, 69,464; *Perspectives on Money Market Mutual Fund Reforms, Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 112th Cong. 6 (June 21, 2012) (Testimony of Mary Schapiro, Chairman, SEC),

modest, those investors suffered substantial liquidity damage, losing access to their money for an extended period of time pending the outcome of judicial proceedings.[8]

The SEC's 2010 Reforms and the FSOC's Call for Additional Measures

In 2010, the SEC adopted amendments to Rule 2a-7 that strengthened the liquidity, credit quality, and maturity standards governing MMF portfolio investments.[9] However, those measures were said to be a preliminary first step, not the end of the effort to fortify MMFs against the risk of destabilizing runs.[10] SEC staff continued to develop a proposal to further strengthen the standards applicable to MMFs.

In August of 2012, then-SEC Chair Mary Schapiro issued the disappointing announcement that the SEC would not propose additional MMF reforms due to lack of support from three of the SEC's five commissioners.[11] As a result, on September 27, 2012, the Chairman of the Financial Stability Oversight Council ("FSOC"), Treasury Secretary Geithner, sent a letter to FSOC members calling upon them to take action because the SEC would not or could not do so.[12]

In November 2012, the FSOC published its Proposed Recommendations Regarding Money Market Mutual Fund Reform ("FSOC Proposal").[13] In its release, FSOC set forth a proposed "determination," in accordance with the Dodd-Frank Act, that the activities and practices of MMFs could create or increase the risk of significant liquidity, credit, and other problems spreading among bank holding companies, nonbank financial companies, and U.S. financial markets. It also set forth three proposed recommendations for structural reform of MMFs that would reduce the risk of destabilizing runs and other significant problems spreading throughout the financial system as a result of MMF activities:

(1) floating the NAV;

(2) maintaining the stable NAV but requiring a capital buffer and a minimum balance at risk ("MBR"); or

(3) maintaining the stable NAV but requiring a larger capital buffer, along with other measures such as stringent investment diversification requirements, increased minimum liquidity levels, and more robust disclosure obligations.

The FSOC Proposal noted that these recommendations were not mutually exclusive but could be implemented in combination to address the structural vulnerabilities that make MMFs susceptible to runs.[14]

Better Markets submitted a comment letter[15] in strong support of the FSOC proposal, based on the reality that MMFs continued to create systemic risk as a result of their structure and their

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http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66f4ddb5-4823-4341-bad9-8f99cdf5fe9a ("Schapiro Testimony").

8 Schapiro Testimony at 6-7.

9 Money Market Fund Reform, 75 Fed Reg. 10,060 (Mar. 4, 2010).

10 FSOC Proposal, at 69,459.

11 SEC Press Release, Statement of SEC Chairman Mary L. Schapiro on Money Market Fund Reform (Aug. 22, 2012), http://www.sec.gov/news/press/2012/2012-166.htm.

12 FSOC Proposal, at 69,549.

13 *Id.* at 69,455.

14 *Id.* at 69,456.

interconnectedness with the financial markets. Better Markets argued that all of the core Proposed Recommendations—the floating NAV, the capital buffer, and the minimum balance at risk—were meritorious and would help substantially reduce the ability of MMFs to trigger or propagate systemic risk in the financial markets. However, Better Markets also argued that none of them would be sufficient, in and of itself, to address those problems, and they should therefore be applied in combination. Similarly, Better Markets argued that the collection of supplemental reforms, including enhanced diversification, additional liquidity requirements, and more robust disclosure, were all worthwhile and should also be implemented as well.

The 2014 MMF Rule

In 2013, in response to FSOC's proposed recommendation, the SEC issued a proposed rule that, most significantly, would establish a floating NAV requirement for institutional prime and institutional tax-exempt MMFs (only about a third of the MMF market), and would permit imposition of gates and liquidity fees to stem runs. Generally speaking, the industry vociferously objected to the proposal to establish a floating NAV requirement, even of limited applicability as proposed by the SEC, arguing that the reforms in the 2010 MMF Rule, along with the proposed gate and liquidity fee provisions, would be sufficient to mitigate risk in the MMF markets. They also predicted dire economic disruption if such reforms were implemented.

Better Markets disagreed. While Better Markets supported the proposed reforms, as far as they went, we warned in our comment letter that the SEC needed to go further by, among other things, establishing a robust capital requirement enabling MMFs to absorb losses, and by eliminating exemptions from the floating NAV requirements for government and retail MMFs.[16] If it did not do so, Better Markets warned, the result would be a "failed rule that instills false comfort."[17]

Ultimately however, in 2014, the SEC implemented a final rule that largely tracked the proposal ("2014 MMF Rule"). The 2014 MMF Rule was a half measure, as feared. It included the very limited floating NAV requirement as well as provisions for liquidity fees and gates intended to discourage runs.

The 2014 MMF Rule, including the limited floating NAV requirement, was implemented in October 2016.[18] As a consequence, some investors did shift their funds from institutional prime and tax-exempt MMFs to government MMFs, which were not subject to the floating NAV requirement. That shift was attributable to the fact that the 2014 MMF Rule drove some "risk-averse investors—those who wish to hold fixed-value shares—into safer, more liquid instruments: the liabilities of the federal government and its agencies."[19] In other words, after certain MMFs were required to value their shares to more accurately reflect their value and risk, some investors moved their money into investments that retained the fiction underlying the stable NAV—the comforting but incorrect perception that investors

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15 *See* Better Markets Comment Letter on Proposed Recommendations Regarding Money Market Mutual Fund Reform (Feb. 15, 2013), https://bettermarkets.com/sites/default/files/FSOC-%20CL-%20MMF%20Recommendations-%202-15-13.pdf.

16 Better Markets Comment Letter on MMF Reforms (Sept. 17, 2013), https://bettermarkets.com/sites/default/files/SEC-%20MMF%20Reform-%209-17-13.pdf, incorporated by reference herein as if fully set forth.

17 *Id.* at 23.

18 Release at 8943 n.18.

19 Stephen G. Cecchetti & Kermit L. Schoenholtz, Money & Banking Blog, *Money Funds—The Empire Strikes Back?* (Jan. 5, 2018), https://www.moneyandbanking.com/commentary/2018/1/12/money-funds-the-empire-strikes-back.

could not lose principal in an MMF. Importantly, however, the dire consequences for the real economy predicted by the industry and its allies in the wake of the 2014 MMF Rule never materialized—companies continued to be able to access short-term funding as needed, with little disruption.[20] Until 2020, the real economy continued to grow and add jobs.

The March 2020 MMF Crisis and Bailout

However, in March 2020, when it finally became clear that the United States, and the rest of the world, was facing a prolonged battle against the COVID-19 pandemic, including restrictive shutdowns of indefinite duration, the result was a sharp economic contraction, compounded by a significant amount of uncertainty. This represented the most significant test of the financial system since the 2008 crisis and, critically, the first major test of the Dodd-Frank Act reforms.[21] The financial system, by and large, performed well. It did not amplify the economic strains induced by the pandemic, and many larger banks in fact supported the economy in important respects.[22] However, it must be noted that substantial government actions were needed to stabilize financial markets and it is likely that without these major taxpayer-supported actions the outcome would have been far worse.

In particular, the MMF market once again served as source of significant contagion that imperiled the markets broadly and forced government intervention. For the second time in just a dozen years, taxpayer money had to be put at risk to support a backstop of MMFs.[23] In March last year, the assets of prime MMFs dropped dramatically.

For example, ICI data showed that prime MMF assets overall dropped by $85.38 billion, or over 10%, just between March 4 and March 18, 2020. Some funds were faring much worse, with their assets falling by half as investors withdraw.[24] And many MMF sponsors were being forced to backstop their MMFs with cash infusions to prevent them from "breaking the buck" as they sold assets to meet redemptions when all asset classes were falling in value. Among the most prominent sponsors forced to provide this support were Goldman Sachs[25] and BNY Mellon.[26]

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20 Stephen G. Cecchetti & Kermit L. Schoenholtz, Money & Banking Blog, *Money Funds—The Empire Strikes Back?* (Jan. 5, 2018), https://www.moneyandbanking.com/commentary/2018/1/12/money-funds-the-empire-strikes-back; Nellie Liang, *Why Congress Shouldn't Roll Back the SEC's Money Market Rules*, BROOKINGS INST. (Jan. 12, 2018), https://www.brookings.edu/blog/up-front/2018/01/12/why-congress-shouldnt-roll-back-the-secs-money-market-rules/.

21 DENNIS KELLEHER & TIM CLARK, BETTER MARKETS, NO FINANCIAL CRASH YET THANKS TO DODD-FRANK AND BANKING REFORMS (June 24, 2020), https://bettermarkets.com/sites/default/files/Better_Markets_White_Paper_Dodd-Frank_Banking_Reforms.pdf.

22 *Id.* at 1.

23 BETTER MARKETS, FACT SHEET: MONEY MARKET FUNDS ARE FAILING AND BEING BAILED OUT AGAIN, AS THEY WERE DURING THE 2008 FINANCIAL CRISIS JUST TWELVE YEARS AGO (Mar. 26, 2020), https://bettermarkets.com/sites/default/files/Better_Markets_Fact_Sheet_on_Money_Market_Funds.pdf.

24 Paul Kiernan, Andrew Ackerman & Dave Michaels, *Why the Fed Had to Backstop Money-Market Funds, Again*, WALL ST. J. (Mar. 21, 2020), https://www.wsj.com/articles/why-the-fed-had-to-backstop-money-market-funds-again-11584788401?mod=article_inline

25 Dave Michaels, *Goldman Steps In to Shore Up Two Money Funds*, WALL ST. J. , Mar. 24, 2020, https://www.wsj.com/articles/goldman-steps-in-to-shore-up-two-money-funds-11585042200

The situation became so grim that on Wednesday, March 18, 2020, the Federal Reserve established[27] an emergency lending facility so that banks could buy more assets from prime funds, thus injecting desperately needed cash, preserving the ability of MMFs to honor redemptions, and supporting the commercial paper market upon which so many companies rely. And, the $2 trillion rescue legislation passed in early 2020 renewed the Treasury Department's authority to guarantee the MMF industry again. This put the full faith and credit of the United States behind a single financial product, just as the government—and the taxpayers—did in 2008. This bailout was necessary because, yet again, the instability in MMFs threatened to spread to the entire financial system, exacerbating the pandemic-induced economic turmoil.

OVERVIEW OF RELEASE

The Release explains that the PWG studied the effects of the COVID-19 pandemic on money market funds and the short-term funding markets last March. The PWG report, issued on December 22, 2020, concluded that "the events of March 2020 show that more work is needed to reduce the risk that structural vulnerabilities in prime and tax-exempt money market funds will lead to or exacerbate stresses in short-term funding markets."[28] The PWG report also sets forth 10 reforms the PWG recommended that policy makers consider as ways to improve the resilience of MMFs and the broader short-term funding markets.[29] Those possible steps included—

1. remove the tie between MMF liquidity and fee and gate thresholds;
2. reform the conditions for imposing redemption gates;
3. establish a minimum balance at risk;
4. strengthen liquidity management;
5. establish a countercyclical weekly liquid asset requirement;
6. float the NAV for all prime and tax-exempt MMFs;
7. establish a swing pricing requirement;
8. establish capital buffer requirements;
9. require liquidity exchange bank membership;
10. establish new requirements governing sponsor support.

The Release seeks comment on the PWG report and specifically on the 10 possible solutions. It specifically notes that the possible reforms should be assessed "both individually and in combination."[30] More specifically, the Release seeks input on the effectiveness of the 10 measures in (1) addressing MMF structural vulnerabilities; (2) improving the resilience of short-term funding markets; and (3) reducing the likelihood that official sector interventions will be necessary to halt future MMF runs.[31]

Finally, the Release observes that some of the 10 potential remedies could be implemented under existing statutory authority, while others might require the coordinated action by multiple agencies or the

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[26] Richard Henderson & Robert Armstrong, *BNY Mellon steps in to support money market fund after outflows,* FIN. TIMES (Mar. 20, 2020), https://www.ft.com/content/8222c5a2-6ad3-11ea-800d-da70cff6e4d3

[27] James Politi, *Federal Reserve sets up facility to make loans to banks*, FIN. TIMES (Mar. 19, 2020) https://www.ft.com/content/0e6029be-6995-11ea-800d-da70cff6e4d3

[28] Release at 8939.

[29] *Id.*

[30] *Id.*

[31] *Id.*

creation of new private entities. And it further observes that MMFs could likely implement some reforms fairly quickly, while others would require longer-term structural changes.[32]

COMMENTS

The potential reforms set forth in the Release have the potential to achieve a number of beneficial changes in the way MMFs are perceived, operate, and respond to stress, which in turn could help mitigate the risk of MMF instability and contagion in times of economic stress. Essentially, if adopted collectively, they would:

- make MMFs more transparent and better understood by investors;
- reduce run risk by disincentivizing redemptions during times of stress;
- allocate any losses to investors in times of stress more fairly; and
- strengthen the ability of MMFs to withstand stress without the need for taxpayer support.

In the balance of this letter, we focus on a number of general principles that should guide the SEC as it evaluates these measures and fashions new rules. In addition, we emphasize two of the most basic reforms that cry out for implementation: floating the NAV for ***all*** MMFs and establishing a capital buffer requirement or its equivalent. Furthermore, we argue that the reforms must be applied in combination, as no one solution will be effective. Finally, we argue that if the SEC is unable to adopt a sufficiently robust collection of reforms, then the regulatory approach to MMFs should be fundamentally altered and they should be regulated under a banking regime.

I. THE SEC MUST CRITICALLY EVALUATE COMMENTS IN LIGHT OF KEY LESSONS LEARNED SINCE THE 2008 MMF CRISIS.

The various attempts to reform the regulatory framework for MMFs since the 2008 MMF crisis have created multiple opportunities for various stakeholders to provide input on various reform proposals. Many of those same stakeholders will undoubtedly provide input in response to this Request (and to any future resulting proposals). The SEC must be sure to review comments with a critical eye. It must not only assess commenters' motivations for opposing more substantive regulation, but also assess commenters' track record in opposing various reforms. For example, it must consider whether the arguments that various industry commenters brought to bear in opposing even the SEC's limited past reforms, particularly the floating NAV requirement, were valid: In short, did those reforms cripple the U.S. economy as predicted by the industry? And, were the limited reforms ultimately adopted by the SEC sufficient to protect the financial system from the risks of MMFs? The answer to both of these questions is plainly "no."

A. Opponents of reform have issued dire but unfounded predictions.

The SEC ultimately adopted a narrow floating NAV, one that applied only to institutional prime and institutional tax-exempt MMFs. Yet even this modest reform triggered stringent opposition from the MMF industry and its allies. For example, the U.S. Chamber of Commerce predicted a parade of negative outcomes, primarily centered on the idea that introduction of a floating NAV for institutional MMFs would result in "severe economic dislocation," warning that a floating NAV would have an "adverse impact on job creation and economic growth" and, ultimately, a floating NAV would result in "dramatic consequences on the fragile U.S. economy."[33]

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32 *Id.*

33 Chamber of Commerce, Comment Letter on MMF Reforms at 3-4 (Sept. 17, 2013).

Better Markets pushed back on this narrative, discounting the most dire predictions and further arguing that even if a floating NAV requirement caused some investors to shift money away from institutional MMFs, "investors as well as entities that rely on the credit markets would undoubtedly adapt" because of the commonsense notion that where "there is a demand for a financial product and money to be made in providing it, a market solution arises."[34]

In fact, the SEC implemented this limited floating NAV, but the predicted "severe economic dislocation" that would cost jobs and threaten the fragile economic recovery, unsurprisingly, never materialized. The floating NAV requirement was implemented in October 2016. And while, indeed, some investors did move money from institutional prime MMFs to government MMFs and other MMFs that were allowed to offer a stable NAV, that shift had virtually no impact on broader macroeconomic conditions. There were no notable disruptions in short-term funding markets, and the decrease in holdings of debt issued by domestic companies and municipalities was relatively minor.[35] Companies were able to continue to access the commercial paper market and the "fragile U.S. economy" continued to grow and add jobs—that is until the COVID-19 crisis. And when the MMF markets once again displayed their continuing vulnerabilities to severe economic stresses, it was due to the weakness of the prior reforms, not any form of overregulation posited by industry opponents. Ultimately, the biased and self-interested dire predictions of the industry turned out to be baseless. Any comments received from the industry in response to the Release must be viewed skeptically in this context.

In fact, these industry forecasts are precisely the type of sky-is-falling exaggerations that the financial services industry has launched against new regulation for almost a century. Time and time again, they have ominously warned that new regulatory requirements will have a devastating impact by imposing unbearable compliance costs or limiting profits. Yet Wall Street has absorbed those reforms, consistently remaining one of the most profitable sectors in our economy. For example, a century ago, when securities regulation first emerged at the state level, Wall Street railed against it as an "unwarranted" and "revolutionary" attack upon legitimate business that would cause nothing but harm.[36] However, in the years following this early appearance of financial regulation, banks and their profits grew handsomely.[37]

Subsequently, when the federal securities laws were adopted, Wall Street staunchly opposed them, claiming that they would slow economic recovery by impeding the capital formation process and discouraging the issuance of new securities. In fact, in the years after the enactment of the federal securities laws, the nation's securities markets flourished. The same pattern has been repeated with each

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[34] Better Markets, Comment Letter on MMF Reforms at 16 (Sept. 17, 2013), https://bettermarkets.com/sites/default/files/SEC-%20MMF%20Reform-%209-17-13.pdf. Apparently Better Markets had a more positive outlook on the ability of the industry to adapt to changed conditions than the industry itself.

[35] Stephen G. Cecchetti & Kermit L. Schoenholtz, *Money Funds – The Empire Strikes Back?* 3 (Jan. 15, 2018), https://www.moneyandbanking.com/commentary/2018/1/12/money-funds-the-empire-strikes-back.

[36] *See* Marcus Baram, *The Bankers Who Cried Wolf: Wall Street's History of Hyperbole About Regulation*, THE HUFFINGTON POST (Jun. 21, 2011, 6:56 PM), http://www.huffingtonpost.com/2011/06/21/wall-street-historyhyperbole-regulation_n_881775.html.

[37] Paul G. Mahoney, *The Origins of the Blue-Sky Laws: A Test of Competing Hypotheses*, 46 J.L. & ECON. 229, 249 (2003) ("In the 5 years following adoption of a merit review statute [the most stringent type of blue sky law statute], bank profits increased on average by nearly 5 percentage points . . .").

new effort to strengthen financial regulation, including deposit insurance, the Glass-Steagall Act, mutual fund reform, and the national market initiatives of the mid-1970s.[38]

More recently, the mortgage lending industry fiercely opposed new mortgage underwriting standards to be administered by the Consumer Financial Protection Bureau. In response, the lending industry hysterically predicted that the new rules would "cripple credit availability and spur banks, credit unions, and mortgage lenders to ***quit the business entirely*.**"[39] However, the available data show that this simply has not happened, and that in fact, lending activity increased.[40] Indeed, the same type of catastrophic messaging from industry accompanied the entire Dodd-Frank Act, yet we know that those reforms have led to a much stronger banking system, one that was able to serve as a source of strength during the recent and significant COVID-induced financial stress. At the same time, those reforms have allowed the finance industry to thrive since 2010, with robust lending and ever-increasing revenues and profits.

The lesson to be learned from this history is that when faced with new regulations, members of the regulated industry routinely argue that the costs and burdens are too heavy—but then they invariably adapt and thrive. The SEC must pursue MMF reform with this lesson in mind.

B. The reforms instituted to date have been insufficient.

The MMF industry and its allies opposed even the modest floating NAV requirement for a limited number of MMFs, contending that the SEC's limited reforms enacted in 2010 and 2014, would be sufficient to mitigate the systemic risks presented by MMFs. Essentially, the industry and its allies argued that enhanced disclosures, the liquidity requirements imposed in 2010, and provisions concerning liquidity fees and gates sufficiently enhanced the safety and soundness of MMFs, and that no further reform was needed.[41] According to these industry commenters, there was no need for even a limited floating NAV requirement, no need for capital requirements for MMFs, and no need for any other meaningful, comprehensive reform.[42]

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38 Marcus Baram, *supra* note 82; *see also* Nicholas Economides et al., *The Political Economy of Branching Restrictions and Deposit Insurance: A Model of Monopolistic Competition Among Small and Large Banks*, 39 J. L. & ECON. 667, 698 (1996) ("The American Bankers Association fights to the last ditch deposit guarantee provisions of Glass-Steagall Bill as unsound, unscientific, unjust and dangerous. Overwhelmingly, opinion of experienced bankers is emphatically opposed to deposit guarantee which compels strong and well-managed banks to pay losses of the weak . . .The guarantee of bank deposits has been tried in a number of states and resulted invariably in confusion and disaster . . . and would drive the stronger banks from the Federal Reserve System.") (quoting Francis H. Sisson, president of the American Bankers Association).

39 John Heltman, *Mortgage Rules Not Chilling Market as Feared, Data Shows,* AM. BANKER (Sep. 24, 2015), http://www.americanbanker.com/news/law-regulation/mortgage-rules-not-chilling-market-as-feared-data-shows-1076899-1.html (emphasis added).

40 *Id.*

41 Chamber of Commerce Comment Letter on MMF Reforms at 4 (Sept. 17, 2013) (arguing that 2010 reforms sufficiently addressed safety and soundness concerns of MMFs, and that any further reforms should be limited to gates and liquidity fees), https://www.sec.gov/comments/s7-03-13/s70313-234.pdf; James J. Angel, Ph.D., CFA, Comment Letter to SEC on MMF Reforms at 4 (Sept. 17, 2013) (arguing that gates will sufficiently stop runs, leaving no need for a floating NAV requirement), https://www.sec.gov/comments/s7-03-13/s70313-228.pdf.

42 James J. Angel, Ph.D., CFA, Comment Letter to SEC on MMF Reforms at 3 (Sept. 17, 2013), https://www.sec.gov/comments/s7-03-13/s70313-228.pdf .

By contrast, Better Markets, which supported both the 2010 reforms and the 2014 reforms as far as they went, argued that those reforms were necessary, but not sufficient, to prevent future MMF crises. As Better Markets explained in 2013:

> None of the reforms included in the Proposed Rules or advocated in this letter can, applied individually, adequately address the risks to the financial markets that MMFs pose. Therefore, to accomplish effective MMF reform, all of those measures must be adopted in combination: a floating NAV, liquidity fees and gates, a substantial capital buffer, and the proposed amendments relating to disclosure and diversity requirements. If the SEC is unable to adopt this approach, the result will be a failed rule that instills false comfort.[43]

In large part, the SEC listened to the industry, rejecting Better Markets' comprehensive "belt-and-suspenders" approach in favor of its piecemeal approach. When the SEC finalized the 2014 MMF Rule, then-Chair Jo White touted the reforms—which would fail to prevent another MMF crisis and resulting taxpayer bailout less than 6 years later—and argued that they would "reduce the risk of runs in money market funds and provide important new tools that will help further protect investors and the financial system in a crisis. Together, this strong reform package will make our financial system more resilient and enhance the transparency and fairness of these products for America's investors." Nevertheless, well after the reforms were adopted, observers continued to argue that they were insufficient.[44]

As it turns out, of course, the 2010 and 2014 reforms were not enough to prevent another crisis. As explained above, when the COVID-19 pandemic triggered an economic downturn, MMFs yet again required taxpayer support in order to prevent their instability from spreading to the financial system and to the already-battered real economy.

As the SEC moves forward with evaluating comments to this Request, it must remember that biased industry commenters, looking out for their own profits and not the public interest, vastly overstated the potential consequences of real, meaningful reform and understated the continued risks that under-regulated MMFs would pose to the financial system.

II. IN DEVELOPING COMPREHENSIVE MMF REFORM, THE SEC SHOULD ADHERE TO REGULATORY PRIORITIES, AND PLACE RISK MITIGATION, TRANSPARENCY, AND INVESTOR PROTECTION ABOVE ANY PRESERVATION OF THE FEATURES THAT MAKE MMFS POPULAR AMONG INVESTORS AND ISSUERS.

The history of MMF regulation has been marked by a piecemeal, incremental approach and a fundamental reluctance to fully and appropriately regulate these financial products. This reticence has grown largely from a desire to preserve the very popular features of MMFs, including perceived principal

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43 Better Markets Comment Letter on MMF Reforms at 23 (Sept. 17, 2013), https://bettermarkets.com/sites/default/files/SEC-%20MMF%20Reform-%209-17-13.pdf.

44 For example, in 2018, in their Money & Banking Blog, prominent economists Stephen G. Cecchetti and Kermit L. Schoenholtz argued forcefully that the 2014 MMF Rule was "insufficient to ensure financial resilience." Stephen G. Cecchetti & Kermit L. Schoenholtz, Money & Banking Blog, *Money Funds—The Empire Strikes Back?* (Jan. 5, 2018), https://www.moneyandbanking.com/commentary/2018/1/12/money-funds-the-empire-strikes-back.

preservation, liquidity, and enhanced yield. This compromised regulatory approach was clearly reflected in the proposal that led to the 2014 MMF Rule ("2013 Proposal"):

> We recognize, and considered when developing the reform proposals we are putting forward today, that money market funds are a popular investment product and that they provide many benefits to investors and to the short-term financing markets. **Indeed, it is for these reasons that we are proposing reforms designed to make the funds more resilient, . . . while preserving to the extent possible, the benefits of money market funds.**[45]

However, this approach is misguided and inconsistent with the statutory mandate of the SEC: protecting investors and the public interest.

MMFs are hybrid instruments, embodying elements of both securities investments and banking products. This combination of features poses unique problems that must be addressed, regardless of whether some of the popular features of MMFs are lost in the process. For example, the stable NAV was one of the core attributes of MMFs that have made them a convenient cash management vehicle for both retail and institutional investors. But the stable NAV also creates a host of potential problems for the financial system and for investors: (1) it incentivizes early redemptions in times of stress and therefore aggravates run risk; (2) it perpetuates a conceptual fiction that misleads investors, since the fixed NAV does not accurately reflect true asset values; and (3) it subjects many investors to unfair treatment, since it allows more sophisticated and diligent investors who redeem early in a stressed market to foist losses onto the remaining investors in a fund.

The only way to effectively address these and other problems posed by MMFs is through a series of reforms applied in combination to eliminate or reduce to the greatest extent possible the systemic risk posed by MMFs. If, as a consequence, some of the "popular" features of MMFs are lost, so be it. Moreover, such outcomes are not only effective in terms of systemic risk management but also fundamentally fair. For example, the elevated yields that MMFs can offer are made possible essentially because MMFs are not required to pay for deposit insurance or bear the cost of maintaining adequate liquidity, capital buffers or reserves. Currently, the U.S. taxpayer foots the bill for those safeguards by providing MMFs with an implicit guarantee that they will be bailed out or backstopped in the event of a crisis and imminent collapse. If MMFs, and ultimately the investors and institutions that use them, are required to absorb those costs and offer lower yields, such an outcome is fair and appropriate.

Ultimately, the economic and financial benefits to investors and the marketplace—stability, transparency, and fairness—will be far greater if MMF reforms are as robust as necessary and not diluted or compromised in the name of convenience and popularity, neither of which are considerations that should control the SEC's regulatory judgments.

III. THE SEC MUST CONDUCT ITS ECONOMIC ANALYSIS IN ACCORDANCE WITH CONGRESSIONAL INTENT, WITHOUT ATTEMPTING QUANTITATIVE COST-BENEFIT ANLAYSIS AND WITH INVESTOR PROTECTION AS ITS GUIDING PRINCIPLE.

For decades, the financial services industry has fought tenaciously to nullify or weaken regulation by forcing the SEC and other agencies to engage in an exhaustive and quantitative cost-benefit analysis for each rule they promulgate. Repeated efforts to impose cost-benefit analysis have surfaced over the

[45] 2013 Proposal at 36,837.

years in Congress and in the executive branch, and the courts have entertained countless legal challenges to rules based largely on claims that agencies have failed to do an adequate job of assessing the economic impact of their rules.

In our comment letters, amicus briefs, and special reports, Better Markets has staunchly opposed this tactic in the industry's war on regulation.[46] What has remained true throughout this longstanding policy debate are a number of core principles that the SEC should observe as it proceeds with MMF reform and all of its regulatory actions.

- Congress seldom actually requires an agency to conduct quantitative cost-benefit analysis when it writes rules, and it certainly has not done so with respect to the SEC. Rather, the SEC's limited obligation is to "to consider . . . whether the action will promote efficiency, competition, and capital formation."[47] Moreover, Congress's careful choice of words make clear that the SEC has broad discretion in discharging its duty. The Supreme Court has long recognized that statutorily mandated **considerations** "imply wide areas of judgment and therefore of discretion" as an agency fulfills its statutory duty.[48] And the D.C. Circuit has similarly confirmed that the SEC need not conduct a rigorous cost-benefit analysis in its rulemakings: "An agency is not required to measure the immeasurable, and need not conduct a rigorous, quantitative economic analysis unless the statute explicitly directs it to do so."[49]

- These Congressional judgments are well-founded, as requiring a rigorous and quantitative cost-benefit analysis takes a huge toll on the quality and pace of rulemaking. Cost-benefit is inaccurate, burdensome, and biased in favor of industry. It tends to result in rules that favor industry's desire for light-touch regulation, and it creates needless and fertile grounds for legal challenges in court—challenges that often lead courts astray as they fail to address industry claims in accordance with what the law actually says.

- The SEC's primary mission is investor protection, and nothing in the law alters that overriding objective. Indeed, even as Congress imposed a limited requirement that the SEC consider certain economic factors in its rulemaking, it reiterated the primacy of investor protection: "The new section [requiring consideration of the three factors] makes clear that matters relating to efficiency, competition, and capital formation are only part of the public interest determination, which also includes, among other things, consideration of the

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46 For example, in 2012, we issued a report examining and exposing the largely successful attempt to foist more stringent cost-benefit analysis requirements upon the SEC, even though the securities laws include no such mandate. *See, e.g.*, BETTER MARKETS, SETTING THE RECORD STRAIGHT ON COST-BENEFIT ANALYSIS AND FINANCIAL REFORM AT THE SEC (July 30, 2012), https://bettermarkets.com/sites/default/files/Setting%20The%20Record%20Straight.pdf. In addition, we have updated the report; BETTER MARKETS, COST-BENEFIT ANALYSIS IN CONSUMER AND INVESTOR PROTECTION REGULATION: AN OVERVIEW AND UPDATE (Dec. 8, 2020), https://bettermarkets.com/sites/default/files/Better_Markets_WhitePaper_CBA_Consumer_Investor_Investor_Protection_Dec-2020.pdf . We incorporate those two reports by reference as if fully set forth herein.

47 *See* 15 U.S.C. § 80a-2(c); 15 U.S.C. § 80b-2(c); 15 U.S.C. § 77b(b).

48 *Sec'y of Agric. v. Cent. Roig Ref. Co.,* 338 U.S. 604, 611 (1950).

49 *Nat'l Ass'n of Mfrs. v. SEC*, 748 F. 3d 359 (D.C. Cir. 2014).

> protection of investors**. For 62 years, the foremost mission of the Commission has been investor protection, and this section does not alter the Commission's mission**.[50]

In light of these legal principles and mission objectives, the SEC should strictly adhere to what the law requires with respect to economic analysis and place investor protection always at the top of its priorities. And to the extent the SEC deems it appropriate to consider the costs and benefits of a proposed rule, it should consider the benefits in expansive terms. That means including both direct and indirect benefits, tangible and intangible benefits, and benefits derived from the role each rule plays as part of a collection of reforms aimed at a public good, not just the benefits of rules in isolation.

IV. THE EXEMPTIONS FROM THE FLOATING NAV FOR GOVERNMENT AND RETAIL FUNDS MUST BE ELIMINATED.

The SEC must eliminate the unwarranted exemptions for government and retail funds that have severely limited the application of the floating NAV. Together, these exemptions carved-out two-thirds [51] of all MMFs from this critically important reform, and that percentage has increased over time.[52]

As observed above, the **fixed** NAV is a mistake, as it fuels run risk, misleads investors into a false sense of security, and unfairly burdens investors who are late to redeem when runs are underway in stressed market conditions. For these reasons, the SEC was right to repeal the fixed NAV, at least in part, in 2014, but it should have done so across the board.

None of the exemptions from the floating NAV that the SEC created in 2014 are warranted. Government funds may be more stable than some other types of MMFs, but they are nevertheless susceptible to run risk. For example, during the summer of 2011, government MMFs experienced a surge in redemptions as concerns intensified over the U.S. debt ceiling impasse and the possibility of a downgrade in government securities.[53] And, the run risk on government MMFs is not confined to the ever-lurking threat of congressional paralysis over the debt ceiling. As noted by the SEC, government funds can hold up to 20 percent of their portfolios in non-government securities.[54] A credit event as to those securities could "trigger a drop in the shadow price, thereby creating incentives for shareholders to redeem shares ahead of other investors."[55] Finally, of course, investors in government MMFs are entitled to the same degree of transparency that investors in other types of MMF investments receive if the NAV is floated. They should be aware that even shares of government funds can and do fluctuate in value.

The exemption for retail funds is even more untenable. As the SEC previously acknowledged, "a retail prime MMF generally is subject to the same credit and liquidity risk as an institutional prime

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50 H.R. REP. No. 104-622, at 39 (1996).

51 According to the most recent data published by the SEC, 281 of the 339 MMFs registered with the SEC are prime retail funds, tax exempt retail funds, or government funds. *See* Securities and Exchange Commission, *Money Market Fund Statistics: Form N-MFP Data, period ending February 2021*, Mar. 16 2021, https://www.sec.gov/files/mmf-statistics-2021-02.pdf.

52 Stephen G. Cecchetti & Kermit L. Schoenholtz, Money & Banking Blog, *Money Funds—The Empire Strikes Back?* (Jan. 5, 2018), https://www.moneyandbanking.com/commentary/2018/1/12/money-funds-the-empire-strikes-back.

53 2013 Proposal at 36,845 (June 19, 2013).

54 *Id.* at 36,854.

55 *Id.*

MMF."[56] Thus, there is nothing inherently more stable about a retail MMF in comparison to an institutional MMF. Indeed, the SEC made clear that the threats are the same.

The SEC previously advanced the flawed argument that run risk in retail funds is significantly lower because retail investors are less inclined to monitor funds closely and to act quickly in the face of potential downturns. In essence, the SEC argued that because retail investors are less sophisticated and slower to act, they deserve fewer protections.

First, that premise is suspect. It is at best unclear to what extent retail investors have the impulse to redeem in times of market stress. And regardless of past episodes,[57] the behavior of retail investors may evolve and may in fact mirror the tendency of institutional investors to redeem MMF shares in the face of instability or crisis.[58]

In any case, even if it were true that retail investors are less sophisticated and slower to act, that is not a sufficient reason to exempt retail MMFs from a floating NAV requirement. Doing so allows more sophisticated retail investors to **gain even more advantage** in times of stress over their less sophisticated peers in the fund. Thus, from the standpoint of fairness, as well as run risk, the exemption for retail funds from the floating NAV is indefensible. All MMFs should be subject to the floating NAV requirement.

V. ESTABLISHING A CAPITAL BUFFER FOR MMFS IS A CRITICAL REFORM

In the 2013 Proposal, the SEC noted that none of the measures discussed would necessarily eliminate MMF run risk, even if applied in combination. For example, it acknowledged that "our floating NAV proposal, [even] in conjunction with our other proposals, may not be sufficient to eliminate the incentive for shareholders to redeem shares in times of fund and market stress." [59]

Accordingly, it is necessary to apply other measures, and foremost among them is a capital buffer that can absorb intense fluctuations in the value of a fund's portfolio securities. A capital buffer offers a number of benefits. In times of stress, it would allow MMFs to sustain broad-based declines in asset values and to continue funding shareholder redemptions without resorting to fire sales that further depress share values. Critically, that in turn would help reduce the risk of runs on MMFs. As the SEC has noted, the floating NAV would not entirely eliminate the tendency of investors to redeem their shares, depending upon their perception of how large a fund's losses will be. By enhancing the ability of an MMF to absorb losses, a mandatory buffer would increase investor confidence that an MMF could withstand adverse movements in the value of portfolio assets without causing a significant drop in per share NAV. This in turn would reduce investors' impulse to redeem shares quickly when portfolio assets begin to drop in value. Thus, with the buffer in place, it is much less likely that liquidity fees and gates will be triggered, thereby also adding to investor confidence and reducing run risk.

In addition, the buffer would provide more transparent, reliable, and ultimately fair support for MMFs. Unlike implicit sponsor support, which is uncertain in both availability and amount, particularly

[56] 2013 Proposal at 36,891.

[57] In truth, the most that can be said is that retail investors might be slightly slower to redeem than institutional investors. In 2008, institutional investors ran first and fast, but the behavior of retail investors was never really put to the test, because the Treasury acted so fast to nationalize the money market fund industry, putting the full faith and credit of the U.S. behind them and stopping the run entirely.

[58] 2013 Proposal at 36,857.

[59] *Id.* at 36,867.

given the stressed market conditions likely to prevail when such support is most needed, the buffer provides an explicit level of support that investors can rely upon. The explicit buffer is also far better than the implicit expectation that taxpayers will once again be forced to rescue MMFs on the verge of collapse.

The buffer would also reduce moral hazard and increase discipline in the management of MMFs. Although the cost of capital to fund a buffer should not be high, given applicable restrictions on permitted MMF investments and their relative safety,[60] there would be costs nonetheless.[61] Sponsors would have an added incentive to manage the MMF prudently not only to preserve investor confidence, but also to protect the buffer against depletion and costly replacement.[62]

To work, a buffer must be set at a level that accounts for multiple factors. First and most fundamentally, it must be able to absorb anticipated losses under a range of scenarios, including historical experience. In addition, it must account for additional costs associated with periods of high MMF stress. Those additional costs could be quantified in terms of the substantial amount of government support that proved necessary to prevent the collapse of MMFs during the financial crisis.[63] Alternatively, those additional costs could be framed in terms of the liquidity losses that investors would suffer if an MMF closes.[64]

Finally, the buffer must also be sufficient to convince fearful investors that the MMF is capable of absorbing whatever losses are anticipated under the applicable circumstances. If investors believe or fear that the decline in value from a financial shock could exceed the buffer, then they are going to withdraw their funds as quickly as possible, accepting known losses to avoid unknown and potentially much greater losses if they remain in the fund. The 2011 institutional prime MMF run (discussed above) illustrates the power of investor psychology in shaping behavior: the exodus from those funds was not triggered by actual, cascading losses, but by the fear and anticipation of such losses.

Therefore, any buffer must be set at a level that is sufficient to cover all of these factors: projected and historical losses; additional costs in the form of liquidity damages or government backstops; and investor psychology in the face of possible financial shocks or crises. In light of these considerations, the level of one or three percent suggested in the FSOC Proposal Recommendations would appear to be insufficient. Historical examples alone, as reviewed in the Release, indicate that MMF losses have risen as high as 3.9 percent.[65] This serves only as a floor regarding actual potential losses, clearly indicating

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60 *Perspectives on Money Market Mutual Fund Reforms, Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 112th Cong. 5 (June 21, 2012) (Testimony of David S. Scharfstein, Professor of Finance, Harvard Business School), http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=ca1f8420-b2de-46dd-aee1-9a22d47b198c ("Scharfstein Testimony").

61 The FSOC explains that the buffer could be raised in any number of ways, including sponsor capital, subordinated buffer shares, or retained earnings. FSOC Proposal, at 69,470. Each method would entail costs that presumably would be passed through to investors, but the incentive among sponsors to manage the buffer prudently would arise nevertheless, as higher costs to investors would commensurately reduce the attractiveness of the fund.

62 Letter from the Squam Lake Group to FSOC, Re: FSOC Proposed Recommendations Regarding Money Market Mutual Fund Reform, at 2 (Jan. 17, 2013), http://www.regulations.gov/#!documentDetail;D=FSOC-2012-0003-0065.

63 Scharfstein Testimony at 8.

64 FSOC Proposal at 69,471.

65 *Id.*

that the necessary buffer must actually be substantially higher than 3.9 percent. If not set at such a level, the buffer will do little to further mitigate run risk.

VI. SUCCESSFUL MMF REFORM REQUIRES THE ADOPTION OF MULTIPLE MEASURES IN COMBINATION WITH ONE ANOTHER; OTHERWISE MMFS SHOULD BE TREATED LIKE BANK DEPOSITS, REQUIRED TO PAY FOR FDIC-TYPE INSURANCE, AND SUBJECTED TO STRICT OVERSIGHT.

None of the reforms that were included in the 2010 MMF Rule, the FSOC MMF Proposal, the 2014 MMF Rule, or in the Presidential Working Group report can, applied individually, adequately address the risks to the financial markets that MMFs pose. To accomplish effective MMF reform, those measures must be applied in combination: a floating NAV for all MMFs, a substantial capital buffer, improved liquidity management measures, and others. If the SEC is unable to adopt this approach, the result will again be a failed rule that instills false comfort and subjects the financial system and taxpayers to the continued threat of potentially catastrophic MMF instability and the need for huge taxpayer rescues. Accordingly, absent a comprehensive package of reforms, the basic approach to MMF regulation should be changed and the SEC should enlist other regulators and policy makers in a concerted effort to establish a regime of regulation for MMFs that is akin to the requirements applicable to banks.

It is true that the proposed reforms will alter the nature of the MMF product. But this alteration is a necessary consequence of taking adequate steps to minimize run risk, contagion, and the future need for government bailouts. Furthermore, this approach conforms with reality: "Principal preservation," or the effectively guaranteed ability of investors to receive 100 cents on the dollar on demand, with the implicit backing of the federal government, is fundamentally inconsistent with an uninsured investment product.

If the SEC cannot or will not adopt the entire collection of measures that reflect the true investment nature of MMFs and that are necessary to address the systemic risks they present, then MMFs should be treated like banks, subject to FDIC-like insurance and minimum capital requirements. [66] Some prominent MMF reform advocates have suggested this very approach, recognizing that by offering cash management services such as on demand deposits and withdrawals, MMFs are "closely mimicking the services provided by regulated commercial banks"[67] and therefore should be treated as such. As Former Federal Reserve Chairman, Paul Volcker, has further explained:

> [MMFs] that desire to offer their clients bank-like transaction services, including withdrawal of funds from accounts at par, and promises of maintaining a constant or stable [NAV], should either be required to organize themselves as special purpose banks or submit themselves to capital and supervisory requirements and FDIC-type insurance on the funds under deposit. These "Stable NAV" [MMFs] would then be allowed to market themselves as offering redemption at par.[68]

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66 Admittedly, even this alternative has its drawbacks, including, as identified in the Release, "creating moral hazard and encouraging excessive risk-taking by money market funds." 2013 Proposal at 36,912. However, if the SEC fails to properly regulate MMFs and eliminate their known systemic risk, then the banking regulators should regulate them, and while doing so, address the potential drawbacks—including moral hazard—of that approach.

67 Letter from Paul A. Volcker to SEC, Re: President's Working Group Report on Money Market Fund Reform, at 1 (Feb. 11, 2011), *available at* http://www.sec.gov/comments/4-619/4619-79.pdf.

68 *Id.* at 2.

Professor Art Wilmarth has recently argued more broadly that requiring all deposit substitutes, including MMFs and other short-term financial claims, to be issued by chartered and supervised banks would confer many benefits. They include enhancing federal regulators' ability to monitor risk in the financial system, comprehensive supervision and examination, required reserves, reduced run risk, and even enhancement in the Fed's ability to conduct monetary policy.[69]

While subjecting MMFs to bank regulation is perhaps controversial, it is at the same time the most profoundly appropriate solution to the problem of an inherently risky investment product masquerading as a banking product. MMFs are essentially marketed as bank products, but spared the cost of maintaining capital reserves, deposit insurance, and compliance with prudential oversight, which affords access to the Federal Reserve as a lender of last resort.[70] These savings, which MMFs have enjoyed for decades, have enabled them to offer retail investors and institutions elevated yields, along with convenient cash management services. Yet those savings and related profits ultimately come at the expense of U.S. taxpayers, who essentially guarantee MMFs in times of stress—real-world scenarios that have played out twice over the last 12 years.

In short, unless the SEC implements the full array of reforms that are necessary to regulate MMFs effectively under the securities laws, their regulation should be shifted from the SEC to banking regulators.

CONCLUSION

We hope these comments are helpful as you proceed with comprehensive MMF reform.

Sincerely,

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69 Arthur E. Wilmarth, Jr., *Taming the Megabanks*, at 342-44 (2020) (Oxford Univ. Press).

70 *Cf.* Stephen G. Cecchetti & Kermit L. Schoenholtz, *Money Funds – The Empire Strikes Back?* at 1.

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