April 11, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Money Market Fund Reforms (File No. S7-22-21, RIN 3235-AM80)

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the above-captioned Proposed Rule ("Proposal" or "Release") by the Securities and Exchange Commission ("SEC" or "Commission").[2] The Proposal seeks to address the various risks posed to investors, the financial system, and the economy, by money market funds ("MMFs"), in response to the fact that the government was forced to bail out the MMF industry two separate times in the span of just 12 years, first during the financial crisis of 2008 and again at the onset of the COVID-19 pandemic in March 2020.

Because the Proposal continues the SEC's piecemeal and inadequate approach to MMF reform, which proved insufficient in March 2020, it is almost certain that the proposed reforms, although improvements, will be insufficient to avoid yet another MMF bailout during the next period of market stress. Accordingly, we urge the SEC to consider a more robust, complete, and effective set of reforms that, in combination, will significantly reduce the likelihood that the American taxpayer will once again be called upon to bail out MMFs and their investors.

MMFs continue to have high run risk in large part due to a government-sanctioned fiction—if not a fraud—that results in an undeserved government subsidy, enabling sponsors to

[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] 87 Fed. Reg. 6652 (Feb. 4, 2022).

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privatize profits in good times and socialize losses that are shifted to the public during market stress. The reality is that MMF net asset values ("NAVs") do not always remain stable, especially but not only during periods of market stress. Nevertheless, most MMFs are still permitted by the government to maintain a fixed NAV, giving investors false comfort that their money is protected from loss. As a result, during periods of market stress when the harsh reality of the falling NAV actually materializes, investors scramble to pull their money out, investor redemptions precipitously increase, sponsors have to conduct fire sales, and asset prices decline in an accelerating negative feedback loop that further fuels the run. This run risk is exacerbated because there are no formally established capital buffers, supplied either by MMF sponsors or a government program, to calm investor fears that they will lose out if they don't redeem as fast as possible as the NAV teeters. As a result, because MMFs play a key role in the short-term funding markets, there is inevitably a de facto government rescue, at taxpayer expense, to prevent a crash or crisis in the broader financial markets.

There are well-known solutions to this run risk and financial instability: require all MMFs to float the NAV, insist on adequate capital buffers and liquidity, and increase transparency and disclosure. Those measures will largely end the runs, end the systemic risk, end MMF bailouts, and protect taxpayers. That doesn't happen because such actions would also end the billions of dollars a year subsidy that the government provides to the MMF industry due to what is euphemistically called an implicit backstop, which, at this point, is really explicit given that the government has bailed out the multi-trillion-dollar industry twice in the last 12 years.

That subsidy is de facto government insurance, really just free money handed to the biggest mutual fund companies in the U.S. that enables MMFs to offer slightly higher yields than bank deposits with everyone pretending that the economic principle that higher yields require higher risks doesn't apply. But of course, that principle does apply; the only question is who pays for the higher risk. Under today's regulation of MMFs (and even if the reforms proposed by the SEC are adopted), taxpayers are paying for the risk. If the reforms Better Markets—as well as numerous other disinterested parties—has long advocated were adopted, the industry would bear those costs, which is only right because it gets the profits in the good times.

It's even worse since the de facto government insurance subsidy also creates unfair competition and rewards regulatory arbitrage, as well as transferring wealth from taxpayers to MMF investors and the MMF sponsors who pocket billions of dollars a year in undeserved profits. That's because MMFs are substantively the same as bank savings accounts except for the different regulation: Two of the most popular features of MMFs—principal preservation and liquidity—are identical for bank savings accounts; the other popular feature—higher yield—is largely if not solely due to MMFs not paying for deposit insurance and being allowed to have a higher risk asset mix. If MMFs didn't get free insurance from the government and had to manage or pay for their own risks (i.e., internalize rather than externalize their costs), then this form of regulatory arbitrage and unfair competition would end.

BACKGROUND

The 2008 Financial Crisis and MMF Bailout

Money market funds, created in the 1970's, purported to offer investors higher returns than bank accounts, while at the same time offering the same security as a bank account. Specifically, MMF investors came to expect they could benefit from the same on-demand liquidity and protection from losses that are a key feature of bank deposits, while earning higher returns.[3] But those features of bank deposits are facilitated and supported by extensive regulations that ensure the safety and soundness of banks and explicitly protect depositors from losses—from capital requirements that ensure the financial health of banks to federally-backed, bank-funded deposit insurance that protects depositors from losses should their banks fail. MMFs were not subject to this sort of regulation, yet for many years were treated as if they were functionally equivalent in terms of risk.[4]

However, the financial crisis made it painfully clear that MMFs had not severed the longstanding link between higher risk and higher returns, and in fact that MMF investors can lose money. The crisis confirmed 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. During the week of September 15, 2008, investors withdrew approximately $310 billion (or 15 percent) of prime MMF assets. This caused 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. Controlling the run required drastic government (and taxpayer) intervention: 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]

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3 Matthew R. Salzwedel, *The Incredible Shrinking Broker-Dealer: Applying the Uniform Commercial Code to Brokerage Firms Providing Commercial-Banking-Like Services on Their Brokerage Accounts*, Banking & Fin. Services Pol'y Rep., February 2010, at 10, 12

4 *See* Michael S. Barr, *The Financial Crisis and the Path of Reform*, 29 Yale J. on Reg. 91, 110 (2012) ("MMFs' redemption-on-demand rules and stable net asset values (NAVs) led many individual and institutional investors to view them as cash-like, near-substitutes for bank deposits.").

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

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.[8] 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.[9] 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 a lack of support from three of the SEC's five commissioners.[10] 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.[11]

In November 2012, the FSOC published its Proposed Recommendations Regarding Money Market Mutual Fund Reform ("FSOC Proposal").[12] 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.[13]

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8 Money Market Fund Reform, 75 Fed Reg. 10,060 (Mar. 4, 2010).
9 FSOC Proposal, at 69,459.
10 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.
11 FSOC Proposal, at 69,549.
12 FSOC Proposal, at 69,455.
13 FSOC Proposal, at 69,456.

Better Markets submitted a comment letter[14] 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 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 the 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.[15] If it did not do so, Better Markets warned, the result would be a "failed rule that instills false comfort."[16]

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.[17] As a consequence, some investors did shift their funds from institutional prime

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14 *See* Better Markets Comment Letter on Proposed Recommendations Regarding Money Market Mutual Fund Reform (Feb. 15, 2013), https://bettermarkets.com/sites/default/files/documents/FSOC-%20CL-%20MMF%20Recommendations-%202-15-13.pdf, incorporated by reference herein as if fully set forth.

15 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.

16 *Id.* at 23.

17 Release at 8943 n.18.

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."[18] 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 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.[19] 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.[20] The financial system, by and large, performed well. It did not amplify the economic strains induced by the pandemic, and many larger banks supported the economy in important respects.[21] However, that was only due to the substantial government actions taken to stabilize financial markets and the economy. It is indisputable that without these major taxpayer-supported actions the outcome would have been far worse.[22] In particular, the MMF market once again served as a 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]

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[18] 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.

[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; Nellie Liang, Brookings Institute, *Why Congress Shouldn't Roll Back the SEC's Money Market Rules* (Jan. 12, 2018), https://www.brookings.edu/blog/up-front/2018/01/12/why-congress-shouldnt-roll-back-the-secs-money-market-rules/.

[20] 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.

[21] *Id.* at 1.

[22] *Id.* at 5-6.

[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.

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 withdrew.[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 and BNY Mellon.[25]

The situation became so grim that on Wednesday, March 18, 2020, the Federal Reserve established 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.[26] 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.

OVERVIEW OF PROPOSAL

The SEC proposes to improve the functioning of MMFs by:

- Removing the liquidity and gate fee provisions established in 2014, based on evidence that those provisions may have led investors to run on MMFs they suspected were nearing the thresholds where gates or fees could be imposed;
- Increasing the liquidity requirements from 10% of daily liquid assets and 30% of weekly liquid assets to 30% and 50%, respectively;
- Imposing a swing pricing requirement for institutional prime and tax-exempt MMFs that would apply when there are net redemptions, intended to require redeeming investors to bear some of the cost of redemptions; and

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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-fedhad-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; 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/8222c5a2-6ad3-11ea800d-da70cff6e4d3.

[26] 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.

- Enhancing transparency by requiring reporting whenever a fund's liquidity falls below half of the regulatory requirements, and by enhancing the completeness and accuracy of information provided on Form N-MFP, including by requiring new information about the composition and concentration of MMF shareholders.[27]

COMMENTS

In a number of respects, the Proposal appears to represent a significant improvement in the regulation of MMFs. Increasing the liquidity requirements from the current thresholds of 10% in daily liquid assets and 25% in weekly liquid assets to 25% and 50%, in particular, will increase the ability of MMFs to weather destabilizing runs. The SEC's analysis demonstrated as much, finding that the increased liquidity requirements would have reduced a fund's chances of exhausting its liquidity during the period of heaviest outflows in the March 2020 crisis from 32% at current levels, to just 9% at the proposed levels.[28] Accordingly, these liquidity requirements must be maintained in the final rule, if not strengthened.[29] Similarly, the enhanced reporting requirements, especially the requirement for an MMF to report when its liquidity falls below certain thresholds, will provide much needed transparency for investors in MMFs and the SEC, particularly during times of market stress. Again, absent credible concerns that enhanced disclosure would harm investors or the markets, the SEC should retain, if not strengthen, this well-considered proposal.[30]

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[27] Release at 7256-85.

[28] Release at 7273.

[29] The SEC's analysis demonstrates that at the proposed liquidity thresholds of 25% of assets in daily liquid assets and 50% in weekly liquid assets, a fund would have had a 9% chance of exhausting its liquidity during the period March 16, 2020, to March 20, 2020. By contrast, funds with a higher threshold of 50% daily liquid assets and 60% weekly liquid assets would not have exhausted their liquidity at any point during the relevant period. Release at 7274. The SEC briefly explains that it opted against proposing these higher thresholds because they "would require a larger number of money market funds to reallocate their portfolio towards lower yielding investments" and that "higher liquidity thresholds may lead funds to increase the risk in the remainder of their portfolios to attract investor flows or to keep fund yields from sliding below zero." Release at 7311. The former consideration should play very little role in the SEC's consideration of higher liquidity thresholds, as the SEC should be focused on protecting markets and investors, not protecting the features that make MMFs attractive, particularly where those features are the result of regulatory arbitrage. *See infra* Section I. The latter concern, known as "barbelling," must be taken into account as the SEC finalizes the liquidity thresholds, but as the SEC points out, MMFs have largely maintained liquidity well above the current thresholds without "barbelling," Release at 7274, so the SEC should provide a credible explanation for why barbelling would be a problem at higher thresholds.

[30] *See* SEC Commissioner Allison Herren Lee, Statement on Proposed Money Market Fund Reforms (Dec. 15, 2021) ("Are investors likely to overreact to such reporting or would the increased transparency help them make better decisions"), https://www.sec.gov/news/statement/lee-statement-proposed-money-market-fund-reforms-121521. This is a legitimate concern, and the SEC should carefully consider it. However, funds are already required to disclose their liquidity levels on a daily basis on their website. Release at

Overall, however, in light of the consistently suboptimal state of MMF regulations, a "significant improvement" may not be enough to prevent yet another taxpayer bailout of MMFs during the next period of market stress. The Proposal, while promising in some respects, appears to suffer from some of the same deficiencies that have plagued previous efforts to reform MMFs, resulting in the March 2020 bailout just 12 years after the 2008 MMF bailout. In particular, the Proposal continues the piecemeal approach to MMF reform, rather than adopting a wholesale, "belt-and-suspenders" approach that will more fully address the variety of risks posed to the financial system by MMFs. In our more detailed comments below, we reiterate the general principles that should guide the SEC as it finalizes the Proposal, along with specific recommendations for improving the Proposal.

I. THE SEC MUST TAKE A WHOLESALE APPROACH TO MMF REFORM THAT PRIORITIZES RISK MITIGATION, TRANSPARENCY, AND INVESTOR PROTECTION ABOVE ANY PRESERVATION OF THE FEATURES THAT MAKE MMFS POPULAR AMONG INVESTORS AND ISSUERS

As we have previously explained, 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. Rather, effective MMF reform requires a variety of risk-reducing provisions to be applied in combination: a floating NAV for all MMFs, a substantial capital buffer, improved liquidity management measures, and others. Nevertheless, 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 preservation, liquidity, and enhanced yield.[31] 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."**[32]

7307. This means investors can already see when a fund's liquidity is dropping. In other words, if an investor is inclined to run because of a liquidity concern, they will run under the current rules, regardless of whether the SEC adopts the proposed enhancements. Indeed, the proposed enhancements would seem to be risk mitigating, as investors will have less uncertainty about the reasons for the drop in liquidity, which may make them less likely to run.

[31] Of course, the features of a particular financial product—no matter how popular—should not drive policy, particularly where, as here, there are significant risks to taxpayers and financial stability, as noted on page 1-2 above.

[32] 2013 Proposal at 36,837.

That concern has apparently persisted in the current Proposal, as throughout the Proposal the SEC justifies its decisions, in part, by explaining the importance of maintaining the benefits MMFs purportedly provide. For example, in explaining why it is not proposing a floating NAV requirement for all MMFs, in spite of many risk-reducing benefits such a requirement would provide, the Release provides:

> "such alternatives **may reduce the attractiveness of affected money market funds to investors and may result in significant reductions in the size of the money market fund sector.** The Commission understands **that retail investors use money market funds as a safe, cash-like product.** To that extent, floating the NAV of some or all stable NAV funds may lead investors of stable NAV funds to reallocate capital into cash accounts subject to deposit insurance. In a somewhat parallel setting, in the aftermath of the 2016 implementation of the floating NAV requirement for institutional prime and institutional tax-exempt funds, approximately $1 trillion left newly floating NAV funds and flowed into government money market funds, matched by corresponding outflows from floating NAV products.[33]

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, including but not limited to the following: (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 shareholders 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 capital buffers or reserves. Currently, the U.S. taxpayer foots the bill for those safeguards by providing MMFs with a guarantee that they will be bailed out or backstopped in the event of a crisis and imminent collapse. If MMFs, and ultimately the investors

[33] Release at 7317.

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

II. THE SEC MUST CRITICALLY EVALUATE COMMENTS IN LIGHT OF KEY LESSONS LEARNED SINCE THE 2008 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 horribles, primarily centered on the idea that the 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."[34]

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."[35]

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

35 Better Markets, Comment Letter on MMF Reforms 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.

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.[36] 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.

In fact, these industry forecasts are precisely the type of sky-is-falling exaggerations that the financial services industry has launched against new regulations 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.[37] However, in the years following this early appearance of financial regulation, banks and their profits grew handsomely.[38]

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 new effort to strengthen financial regulation, including deposit

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[36] 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.

[37] *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.

[38] 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 . . .").

insurance, the Glass-Steagall Act, mutual fund reform, and the national market initiatives of the mid-1970s.[39]

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*.**"[40] However, the available data show that this simply has not happened and that in fact, lending activity increased.[41] 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 other 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.[42] 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.[43]

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[39] 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).

[40] John Heltman, *Mortgage Rules Not Chilling Market as Feared, Data Shows,* American 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).

[41] *Id.*

[42] 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.

[43] 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 .

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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.[44]

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.[45]

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 another bailout 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 adverse consequences of real, meaningful reform and understated the continued risks that under-regulated MMFs would pose to the financial system.

III. THE SEC MUST STRENGTHEN THE PROPOSAL

A. All MMFs Should Be Subject to the Same Pricing Requirements

The SEC must eliminate the unwarranted exemptions governing pricing for government and retail funds, including the exemption from the floating NAV finalized in 2014, and the exemption from swing pricing proposed here. At the time the floating NAV exemption was finalized in 2014, it carved-out two-thirds percent of all MMFs from this critically important reform, and that percentage has increased over time.[46] In other words, the SEC is now proposing

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44 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.

45 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.

46 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.

to exempt the majority of MMFs from two important regulations designed to protect investors and markets from the risks posed by MMFs. This is a mistake, and the SEC should apply these risk-reducing measures across MMFs.

The SEC must eliminate the fixed NAV for government and retail funds. 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.[47] 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.[48] 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."[49] 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 MMF."[50] 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, 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. In fact, the SEC, in this Proposal, already rejected a similar argument, that the proposal to enhance liquidity should not apply to retail MMFs:

> "With the exception of tax-exempt money market funds, which will continue to be exempt from the daily liquid asset requirements, our proposal does not establish

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[47] 2013 Proposal at 36,845 (June 19, 2013).
[48] *Id.* at 36,854.
[49] *Id.*
[50] 2013 Proposal at 36,891.

> different liquidity thresholds by type of fund.208 **Although outflows in March 2020 were more acute in institutional prime money market funds than in retail prime money market funds, we do not know that redemption patterns would be the same in future periods of market turmoil, particularly without official sector intervention to support short-term funding markets.**"[51]

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.

All MMFs should also be subject to the swing pricing requirement. The SEC proposes to require an MMF to apply swing pricing for institutional prime and tax-exempt funds whenever there are net redemptions from the MMF.[52] When applicable, a fund would be required to adjust its NAV to account for the costs of selling a pro-rata portion of each security in the portfolio (i.e. a "vertical slice" of the portfolio). In addition, if a fund's net redemptions exceeded the so-called "market impact threshold," generally "4% of the fund's net asset value divided by the number of pricing periods the fund has in a business day," the swing factor would also need to take into account the market impacts of selling a vertical slice of the portfolio to meet redemptions.[53] Although complex, and leaving a fair amount of discretion for MMFs that may cause them to understate the swing factor when there are net redemptions,[54] swing pricing could result in a number of important benefits. By increasing the cost of redemptions during periods of net outflows, it could reduce the "first-mover advantage" that precipitates runs, and as a result, reduce or eliminate the unfair disadvantage to later redeeming shareholders.[55]

Unfortunately, these benefits will not be fully realized under the Proposal because the SEC is proposing to also exclude government and retail funds from the swing pricing requirement.[56] Many of the SEC's reasons for proposing to exclude government and retail funds from the swing pricing requirement are similar to the reasons advanced for exempting them from the floating NAV requirement, i.e. they tend to present less run risk, in particular for retail MMFs because retail investors do not appear as concerned with liquidity and do not monitor funds as closely.[57] The

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[51] Release at 7274.
[52] Release at 7260-61.
[53] Release at 7261.
[54] *Cf.* Release at 7261 ("We understand that it may be difficult to produce timely, good faith estimates of the market impact of selling a pro-rata portion of each instrument the fund holds. Recognizing these difficulties, and because many securities held by institutional funds have similar characteristics and would likely incur similar costs if sold, the proposed rule would permit a fund to estimate costs and the market impact factor for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type in the fund's portfolio, rather than analyze each security separately."
[55] Release at 7302.
[56] Release at 7260.
[57] Release at 7266.

SEC also explains that it is proposing to exempt government and retail MMFs from the swing pricing requirement because

> "retail money market funds and government money market funds typically maintain a stable NAV. Investors in these funds, therefore, are accustomed to a stable NAV and may be more sensitive to price volatility. Requiring a retail or government money market fund to adjust its NAV on any day it has net redemptions [as required under swing pricing] effectively would require these funds to operate with a floating NAV."[58]

This is a particularly unconvincing argument. The SEC should not exempt government and retail funds from a swing pricing that will reduce run risk merely because it mistakenly failed to subject them to the floating NAV (that would also reduce run risk, among other things as explained above) in 2014. Indeed, it is largely the guaranteed return of the fixed NAV, which the SEC is proposing to protect for government and retail funds, that leads to run risk in the first place.[59] Instead, the solution to government and retail MMF investors not being used to a floating NAV is to require those funds to use a floating NAV as well.

B. <u>The SEC Should Consider Requiring a Capital Buffer to Ensure Financial Resiliency</u>

Another potential reform that would significantly improve the financial resiliency of MMFs 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 sponsor support, which is uncertain in both availability and amount, the buffer provides an explicit level of support that investors can rely upon. The explicit buffer is also far

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[58] Release at 7266.

[59] William A. Birdthistle, *Breaking Bucks in Money Market Funds*, 2010 Wis. L. Rev. 1155, 1169 (2010) ("A run on a financial institution requires, as a prerequisite, some sort of promise by the institution of a guaranteed return to its counterparties.78 A run then occurs when counterparties of the promising institution fear that the institution no longer holds assets sufficient to fulfill all of its obligations.").

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 buffer 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

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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), *available at* 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), *available at* http://www.regulations.gov/#!documentDetail;D=FSOC-2012-0003-0065.

[63] Scharfstein Testimony at 8.

[64] FSOC Proposal at 69,471.

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 that the necessary buffer must actually be substantially higher than 3.9 percent. Without such a level, the buffer will do little to further mitigate run risk.

C. The SEC Must Credibly Explain Why It Is Rejecting Other Potential Complementary Means of Addressing MMF Risk

Ultimately, the SEC should re-evaluate its approach to money market reform. As explained above, MMF reform requires a comprehensive, wholesale approach. Yet the SEC's approach has been implementing piecemeal reforms, more or less in isolation, and the Proposal, while an improvement on previous iterations of that approach, is still a difference of degree, not of kind. Essentially, the substantive elements of the Proposal designed to directly enhance the resiliency of MMFs are to (1) swap out the liquidity gate and fee provisions from 2014 for a swing pricing requirement, as a way to disincentivize or stem runs and (2) enhancing the liquidity provisions. Other potential reforms, including a capital buffer and expansion of the floating NAV requirement, and others put forth by the President's Working Group, Better Markets, and others, are relegated to the necessarily brief discussion of potential alternatives.[66]

A common refrain in the explanations for why these alternatives were rejected is that they would not, by themselves, eliminate every market failure in MMFs or may not have prevented the issues that arose in March 2020.[67] This is no doubt true for those alternatives, **but is also true for virtually all reforms including the reforms in the Proposal**, because as Better Markets has explained, no single reform will fix the myriad structural problems with MMFs. Indeed, proving that very point, the SEC does not suggest that swing pricing or enhanced liquidity requirements will **eliminate** all risks posed by MMFs. For example, while we agree that swing pricing will produce a disincentive to redeem when it applies, and that this disincentive could help prevent or at least mitigate a destabilizing run during a time of market stress, whether it will do so depends on the nature of the particular circumstances of the market stress and what incentives are motivating particular investors at that time, none of which the SEC knows in advance. Depending on the facts and circumstances at the time, particularly in a time of market stress and high uncertainty, taking a guaranteed payout now, even with a discount from swing pricing, is better than an uncertain payout later (during which ongoing swing pricing may take an even bigger portion of their redemption).

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[65] *Id.*

[66] Release at 7309-25.

[67] Release at 7318 (explaining that floating NAV "may reduce, but does not eliminate, the first mover advantage and corresponding run incentives during selloffs); Release at 7323 ("Importantly, capital buffers may not have prevented the liquidity stress that arose in March 2020").

That no reform, even those actually proposed by the SEC, will solve every problem with MMFs is a reason for adopting more of those reforms to minimize the risks posed to the financial system by MMFs, not a reason for jettisoning all but a few isolated reforms that also will not, by themselves, solve every problem with MMFs.

The SEC's continued approach is a bit like going outside on a cold winter's day wearing a baseball cap, gloves, t-shirt, shorts, and bare feet, realizing you are freezing, swapping out the baseball cap for a wool hat, putting on thicker gloves, and explaining that you will not be putting on shoes (or even socks) because shoes and socks will not keep you from getting cold. Not only are you still going to be cold, but your reason for refusing to put on shoes and socks makes little sense because the gloves and hat also will not prevent you from getting cold. Instead, you take a wholesale approach, covering as much of your body as possible—no one piece of clothing could prevent you from getting cold, but if you use lots of different types of clothing, you will reduce how cold you get.

As it finalizes the Proposal, the SEC should abandon the piecemeal approach, which has already failed, and instead adopt a more wholesale approach. This would mean, at the least, treating the variety of credible reforms that have been floated, including a floating NAV, capital buffers, and sponsor support requirements, and treating them not as "alternatives" to the proposed reforms, but as potential complements to the reforms already proposed that will act in concert to reduce the risk MMFs pose to the financial system. Absent such an approach, it is far too likely the next period of financial stress will put taxpayers on the hook for yet another bailout.

CONCLUSION

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,

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