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FSOC Issues Proposed Recommendations on Money Market Fund Reforms After SEC Fails to Act

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On November 13, 2012, the Financial Stability Oversight Council (FSOC) voted to issue proposed recommendations (Proposed Recommendations) to the US Securities and Exchange Commission (SEC) regarding additional reforms of the rules governing money market funds (money funds).[1] The FSOC's action follows extended debate regarding whether regulatory reform of money funds in addition to the reforms adopted in 2010 is warranted. In particular, the FSOC developed and issued its Proposed Recommendations only after SEC Chairman Mary L. Schapiro announced on August 22, 2012 that the SEC would not call a meeting to vote on a proposal to introduce additional reforms for money funds, because three of the four other SEC Commissioners had informed her that they would not support the draft proposal prepared by SEC Staff.[2]

Messrs. Murphy and Ledig are partners, Mr. Miller is a counsel and Mr. Cohen is an associate in the Financial Services Group of Dechert LLP. From 1994 to 1997, Mr. Murphy served as Associate Director and Chief Counsel of the SEC's Division of Investment Management. Mr. Ledig previously served as an attorney in the Office of the General Counsel of the Federal Home Loan Bank Board, where he was responsible for regulatory policy matters.

This article provides background on the events leading up to the issuance of the Proposed Recommendations. It then outlines the Proposed Recommendations and reviews additional actions the FSOC or the Board of Governors of the Federal Reserve System (Federal Reserve) might take if the SEC does not take action in order to address perceived weaknesses in the structure of the money fund industry. This article was finalized as of November 14, 2012, the day after the FSOC's open meeting at which it voted to issue the Proposed Recommendations. Because the regulatory landscape is changing rapidly, any forecast of regulatory action may be subject to change.

Background

During the 2008 financial crisis, the Reserve Primary Fund became only the second money fund in history to break the buck, when its shares dropped from $1.00 to $0.97 in the wake of the bankruptcy of Lehman Brothers Holdings Inc. This led to a wave of redemptions, primarily by investors in money funds invested in corporate securities (prime money funds). While much of this "flight to quality" consisted solely of the transfer of proceeds from prime money funds to money funds invested in government securities, the redemptions nevertheless aggravated a lack of liquidity in the commercial paper market, which some have argued led to further distress in the financial system.

In February 2010, the SEC adopted amendments to Rule 2a-7 under the Investment Company Act of 1940, as amended (1940 Act), the rule that primarily governs money funds, and other rules under the 1940 Act that govern money funds to address many of the concerns raised during the financial crisis (2010 Amendments).[3] These reforms included, among other things, enhanced liquidity requirements and tighter maturity, diversification and credit quality standards for money fund investments. When the 2010 Amendments were adopted, Chairman Schapiro described them as "an important first step in our efforts to strengthen the money market regime."[4]

Since the adoption of the 2010 Amendments, Chairman Schapiro and other regulators have stated the belief that further reforms of money funds are necessary to reduce the potential for harm to the US financial system. In October 2010, the President's Working Group on Money Market Fund Reform issued a report outlining several possible reform options, including a floating net asset value (NAV), privately sponsored emergency liquidity vehicles, mandatory redemptions in-kind and money fund insurance.[5] An SEC roundtable followed in 2011, examining the role of money funds in the 2008 financial crisis and discussing possible reforms. The FSOC annual reports for 2011 and 2012 also recommended further reforms, identifying mandatory floating NAVs, capital buffers and redemption restrictions as possible reforms.[6] Similarly, a recent publication of the International Organization of Securities Commissions supported further reform.[7] Federal Reserve Chairman Ben Bernanke has supported additional reform, frequently expressing concern about the "risk of runs" on money funds and stating that "[a]dditional steps to increase the resiliency of money market funds are important for the overall stability of our financial system and warrant serious consideration."[8]

During this same time period, the industry held its own roundtable, submitted numerous comment letters to the SEC and met with members of Congress and SEC Commissioners to express opposition to further money fund reforms of the type advocated by the regulators. In addition, many municipal and corporate issuers and representatives of investors expressed their opposition to further reform.

In testimony before the Senate Committee on Banking, Housing, and Urban Affairs on June 21, 2012, Chairman Schapiro acknowledged that the 2010 Amendments had been successful, but reiterated her belief that further regulation of money funds was necessary. Chairman Schapiro outlined a proposal prepared by the SEC Staff that would require money funds to either (i) convert to a floating NAV (in contrast to their current stable $1.00 NAV per share) or (ii) maintain a stable NAV while maintaining a capital buffer and imposing certain restrictions on redemptions.[9]

According to press reports and her press release, Chairman Schapiro sought to bring the Staff proposal to a vote before the SEC Commissioners in late August. If approved by a majority of the Commissioners, the Staff proposal would have been released for public comment and could have served as the basis for additional regulatory reforms by the SEC. However, in a press release dated August 22, 2012, Chairman Schapiro stated that three SEC Commissioners had informed her they would not support the Staff proposal. Although the press release did not mention which Commissioners opposed the proposal, Democratic Commissioner Luis A. Aguilar and Republican Commissioners Daniel M. Gallagher and Troy A. Paredes, who had long questioned the need for further reform, subsequently issued statements giving their reasons for not supporting the SEC Staff proposal.

In a statement issued on August 23, 2012, Commissioner Aguilar explained that, before he could support a proposal, he sought further analysis of (i) the cash management industry as a whole, (ii) the 2010 Amendments and their impact and (iii) the potential impact of the reforms outlined in the Staff proposal.[10] Commissioner Aguilar also noted his concern that the Staff proposal could be a catalyst for investors to move investments out of money funds and into unregulated investment vehicles.

Commissioners Gallagher and Paredes issued a joint statement on August 28, 2012 in which they stated that the "necessary analysis has not been conducted to demonstrate" the efficacy of the reforms outlined in the Staff proposal.[11] The Commissioners recommended an approach that "(i) would empower money market fund boards to impose 'gates' on redemptions; (ii) mandate enhanced disclosure about the risks of investing in money market funds; and (iii) conduct a searching inquiry into, and a critical analysis of" the 2010 Amendments and the impact that additional reforms would have on money funds, investors, financial institutions, systemic risk and the overall economy.[12] Finally, in response to Chairman Schapiro's suggestion that other regulators consider further money fund reform, the Commissioners expressed their belief that "money market funds are squarely within the expertise and regulatory jurisdiction of the SEC."[13]

Notwithstanding the lack of support from her fellow Commissioners, Chairman Schapiro's press release stated her view that "the issue [of money fund reform] is too important to investors, to our economy and to taxpayers to put our head in the sand and wish it away. Money market funds' susceptibility to runs needs to be addressed."[14] Chairman Schapiro also raised the possibility that other financial regulators might pursue money fund regulation, noting that "other policy makers now have the clarity that the SEC will not act to issue a money market fund reform proposal and can take this into account in deciding what steps should be taken to address this issue."[15]

Statement from Treasury Secretary Geithner

Immediately following the issuance of Chairman Schapiro's press release, a Treasury Department spokeswoman stated that the Treasury Department is consulting with other regulators "to consider the appropriate next steps to reduce risks to financial stability from money-market funds."[16] Subsequently, on September 27, 2012, Treasury Secretary Geithner issued a letter in which he urged his fellow members of the FSOC to use the FSOC's authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to recommend to the SEC that it proceed with money fund reform. Secretary Geithner specifically identified three reform proposals that the FSOC should consider and possibly recommend to the SEC: (i) requiring money funds to convert to a floating NAV; (ii) requiring money funds to hold a capital buffer; and (iii) imposing capital and enhanced liquidity standards, potentially coupled with liquidity fees or redemption "gates."[17]

Secretary Geithner further stated that "in the event the SEC is unwilling to act in a timely and effective manner," the FSOC should consider exercising its authority under Dodd-Frank to designate money funds or their sponsors or advisors as systemically important institutions (SIFIs) or to apply heightened risk-management standards to money funds under its authority to designate systemically important payment, clearing or settlement

activities.[18] Additionally, Secretary Geithner suggested that other agencies evaluate their authority to take action "to address certain of the risks posed by [money funds]," specifically highlighting the bank regulatory agencies' authority to "impose capital surcharges on regulated entities that sponsor [money funds]," or otherwise restrict financial institutions' ability to sponsor, borrow from, invest in, and provide credit to money funds that do not have structural protections in place.[19]

The US Chamber of Commerce (Chamber) and Dechert LLP had both commented on Secretary Geithner's letter, noting that the FSOC should proceed with caution. The Chamber requested "that the Council refrain from making recommendations, and instead encourage the SEC, an independent regulatory agency, to move forward with a different approach."[20] It noted that "[a] majority of commissioners of the Securities and Exchange Commission have indicated that they are willing to consider options to further strengthen the resiliency of money market mutual funds if such action is justified by a careful examination of the impact of the 2010 reforms to Rule 2a-7."[21] The letter from Dechert LLP focused on the legal requirements the FSOC must meet in order to make a recommendation and stated that "the FSOC must act in logical order and put the regulatory horse before its cart if the FSOC is to meet statutory requirements and administrative best practices, and avoid being found to have acted arbitrarily, capriciously and contrary to law."[22]

The FSOC's Proposed Recommendations

On November 13, 2012, the FSOC exercised its authority under Section 120 of Dodd-Frank to issue the Proposed Recommendations. There will be a 60-day public comment period on the Proposed Recommendations, following the publication in the Federal Register. In the release relating to the Proposed Recommendations (FSOC Release), the FSOC proposes three alternatives for consideration:

- *Alternative One – Floating NAV*: Under the first proposal, money funds would be required to have a floating NAV per share by removing the exemptions provided by Rule 2a-7, which allow money funds to use amortized cost accounting and/or penny rounding to maintain a stable NAV of $1.00 per share.
- *Alternative Two – Stable NAV with NAV Buffer and "Minimum Balance at Risk":* The second proposal would allow money funds to maintain a stable NAV of $1.00 per share, provided the following two requirements are met: (i) an "NAV buffer" is established with assets in an amount up to one percent of a fund's assets, in order to absorb day-to-day fluctuations in the value of the fund's portfolio securities; and (ii) three percent of a shareholder's highest account value in excess of $100,000 during the previous 30 days – a "minimum balance at risk" (MBR) – be made available for redemption only on a delayed basis. With respect to the NAV buffer, the FSOC proposed that it could be raised through various methods. With respect to the MBR, the FSOC noted that most redemptions would not be affected, but that, by delaying redemptions of an investor's MBR for 30 days, those funds would be available and would bear the first losses in the event that a money fund suffered losses in excess of its NAV buffer, thereby creating a disincentive to redeem and providing protection for shareholders who remain in the fund. The FSOC proposed that these requirements would not apply to Treasury money funds.
- *Alternative Three – Stable NAV with NAV Buffer and Other Measures:* The FSOC's third proposal would allow money funds to maintain a stable NAV of $1.00 per share, provided that they establish a risk-based NAV buffer of three percent of a fund's assets to provide explicit loss-absorption capacity and comply with more stringent investment diversification requirements, increased minimum liquidity levels and more robust disclosure requirements. The FSOC proposed that, if it can be adequately demonstrated that more

> stringent investment diversification requirements, alone or in combination with other measures, complement the NAV buffer and further reduce the vulnerabilities of money funds, the FSOC could include those diversification requirements in its final recommendation and reduce the size of the NAV buffer to less than three percent.

The FSOC Release stated that the three approaches are not mutually exclusive, but could be implemented in combination. The FSOC Release also sought public comment on other potential reforms. In the FSOC Release, the FSOC acknowledged that some stakeholders (*that is*, Commissioners Gallagher and Paredes) had suggested gates or other features that could be implemented only during times of market stress. In light of such suggestions, the FSOC requested that commenters address concerns that such features might increase the potential for industry-wide runs in times of stress. The FSOC Release also stated that the FSOC recognizes the concerns raised by Commissioner Aguilar that unregulated or less-regulated cash management products may pose similar risks to money funds. The FSOC Release stated that the FSOC and its members will address any risks to financial stability that may arise from such products.

The FSOC Release stated that the FSOC believes that money funds qualify as nonbank financial companies and, thus, are subject to the FSOC's authority to make recommendations under Section 120 of Dodd-Frank. The FSOC Release does not note that the Federal Reserve has not issued a final rule regarding the circumstances under which a company qualifies as a nonbank financial company. Significant issues have been raised as to whether money funds would qualify for nonbank financial company treatment.

In issuing the Proposed Recommendations, the FSOC Release explained that the FSOC had consulted with the SEC Staff, but the FSOC Release did not refer to any discussions with particular SEC Commissioners. Because Section 120 requires the FSOC to take into account the costs of a proposed recommendation upon long-term economic growth, the FSOC Release provided an abbreviated cost-benefit analysis of the Proposed Recommendations, but noted that, if the SEC accepts the Proposed Recommendations, the SEC would consider the economic consequences of implementing the recommendation through the SEC's rulemaking, which would be informed by the SEC Staff's own economic study and analysis.

After the 60 day comment period, if the FSOC were to formally recommend that the SEC impose enhanced requirements on money funds, the SEC would be required either (i) to impose the recommended standards or similar standards that the FSOC deemed acceptable or (ii) to explain in writing within 90 days to the FSOC why the SEC had determined not to follow the FSOC recommendations. The FSOC is required to report to Congress on any recommendations the FSOC issues and the implementation thereof, or the failure of the appropriate agency to implement such recommendations.

Other Potential Action by the FSOC – Designating Money Funds or Their Sponsors as SIFIs

Although the FSOC is first proposing to address its concerns through the vehicle of industry-wide Section 120 Proposed Recommendations, Secretary Geithner indicated in his letter and at the FSOC open meeting that the FSOC might seek to impose added regulatory requirements on particular money funds or sponsors by designating them as SIFIs, if the SEC does not act to impose additional reforms.

Section 113 of Dodd-Frank grants the FSOC the authority to designate individual nonbank financial companies, potentially including money funds, as SIFIs. Such a designation would subject a fund to supervision and regulation by the Federal Reserve. Although the FSOC issued interpretive guidance in April of this year as to how it would evaluate whether to designate a nonbank financial company as a SIFI,[23] it has not yet designated any institution as a SIFI.

Assuming that money funds do qualify as nonbank financial companies, based on interpretive guidance adopted by the FSOC, the FSOC would generally follow a three-stage process for the preliminary review of a

money fund for potential designation. Stage 1 includes the application by the FSOC of a set of six quantitative factors, or screens, to identify companies that may merit further in-depth review. The primary screen is the requirement that a company must have $50 billion or more of global total consolidated assets. A company also must meet one or more of the other five screens, which measure credit default swaps outstanding for which a company is the reference entity, derivatives contracts into which a company has entered, total debt outstanding, leverage and short-term debt.[24]

Following Stage 1, a company that was preliminarily identified based on the six quantitative factors would be subjected in Stage 2 to a more comprehensive and company-specific analysis, addressing both qualitative and quantitative factors. If, after the Stage 2 analysis is completed, the FSOC believes that further review is necessary, in Stage 3 it could request more detailed information directly from the company and would provide the company an opportunity to submit its own views regarding its possible designation as a SIFI.

After gathering additional information in Stage 3, the FSOC would decide whether to make a preliminary determination that a company should be designated as a SIFI and would inform the company of the basis for any such determination. A designated company then would have the opportunity to request a hearing before the FSOC. If a hearing is held, the FSOC would be required to make a final determination within 60 days thereafter. A company that receives a SIFI designation would have the right to seek judicial review of that designation.

A money fund designated as a SIFI would be subject to enhanced prudential standards regarding its capital, liquidity and single counterparty credit exposure limitations and would be subject to stress testing, resolution planning and early remediation requirements. The Federal Reserve published a proposed rule regarding enhanced prudential standards in January 2012.[25] The Federal Reserve acknowledged that its proposal was focused on large bank holding companies (BHCs) and did not address the variety of circumstances that might be presented by nonbank financial companies that are designated as SIFIs, but suggested that it would tailor in some manner the enhanced standards that it would apply to each particular SIFI.[26] The uncertainties in the proposal present significant issues for entities, such as money funds, which do not operate in a manner comparable to large BHCs.

Possible Action by the Federal Reserve

As indicated by Secretary Geithner, bank regulatory agencies also have the authority to impose regulations that would affect money funds or their sponsors, particularly BHCs. In fact, the Federal Reserve has indicated informally that it could exercise supervisory authority over BHCs in a manner that takes account of potential financial support that a BHC might provide to a sponsored fund or by setting new limits on the ability of BHCs to rely on funding provided by money funds.

In a recent speech, Eric S. Rosengren, President of the Federal Reserve Bank of Boston, suggested that, if the SEC does not move forward with money fund reform, BHCs that sponsor prime money funds could be made subject to stress tests that take account of their exposure to the risk of a sponsored money fund breaking the buck.[27] In particular, Mr. Rosengren stated that, if the SEC failed to enact additional reforms, "an alternative for funds with depository institution or depository institution-affiliated sponsors would be to include likely money market mutual fund support in the sponsor's stress tests."[28] He further explained that these sponsors could calculate the likely capital support needed in a stress scenario "[b]ased on the historical experience of their money market funds, the historical experience of similar funds, and their money market funds' exposures."[29] The outcome of these stress tests could have implications for the Federal Reserve's review of BHC capital plans and of the capital that BHCs will be expected to maintain.

In another speech given earlier this year, Federal Reserve Governor Daniel K. Tarullo suggested a different approach that would restrict money fund investments in BHCs.[30] Governor Tarullo indicated that, in the absence of SEC reforms, the Federal Reserve could set new limits on BHCs' reliance on funding

provided by money funds. This could have the effect of limiting investments by prime money funds in BHCs, which could affect short-term funding overall for BHCs.

In the Federal Reserve's enhanced prudential standards proposal under Section 165 of Dodd-Frank, while it proposed in general to exclude the credit exposure of the funds that a BHC or SIFI sponsored or advised from the calculation of the BHC's or SIFI's single counterparty credit exposure, it suggested that this treatment might be at odds with the support that some companies provided during the financial crisis to funds they sponsored or advised.[31] The Federal Reserve asked for comment on whether a BHC or SIFI should include such funds for purposes of the single counterparty credit exposure limitations.

Possible Action by the SEC

Although Chairman Schapiro's announcement on August 22, 2012 stated that the SEC would not be taking action, the FSOC's Proposed Recommendations may prompt the Commissioners to seek a compromise approach. At the FSOC's open meeting, Secretary Geithner and other members stated explicitly that the preferable course is for the SEC to adopt appropriate reforms on its own, and that, in such an event, the FSOC would not make a formal recommendation. In this regard, Commissioner Gallagher, who initially did not support the Staff proposal, later indicated that he may support certain aspects of the proposed reforms, including a requirement for money funds to convert to a floating NAV. In an interview reported in Bloomberg in late September 2012, Commissioner Gallagher indicated he may be open to agreement with Chairman Schapiro, stating that requiring money funds to have a floating NAV is "an attractive option" that he is likely to support.[32] Commissioner Gallagher's statement, along with the issuance of the Proposed Recommendations from the FSOC and statement by its members, will likely renew the possibility of compromise among the Commissioners and potential action by the SEC.

In addition, the money fund industry reportedly has met with members of the SEC Staff to discuss a potential compromise prior to the FSOC issuing the Proposed Recommendations. According to an article published in Bloomberg, the Investment Company Institute (ICI), the national association of US investment companies, and representatives of several money fund firms met with Chairman Schapiro, members of the SEC Staff and representatives from the Treasury Department on October 26, 2012 to discuss the industry's proposals.[33] The Bloomberg article reported that the ICI and money fund firms, including BlackRock and Fidelity, offered a plan that would allow money funds to impose "stand-by liquidity fees" on investors who withdraw money under certain circumstances.[34] More specifically, under this plan, the liquidity fees would be triggered if a money fund's liquidity fails to meet existing minimums or a fund's mark-to-market NAV falls below a designated level. A Wall Street Journal article published on November 8, 2012 reported that regulators from the SEC and the Treasury Department were not persuaded by the money fund industry's compromise plan.[35] The FSOC also did not include such a proposal as part of the three primary alternatives of the Proposed Recommendations.

Conclusion

While the money fund industry initially avoided further regulation by the SEC, the industry continues to face regulatory uncertainty due to the FSOC's Proposed Recommendations and other potential actions that the FSOC or the Federal Reserve may take, if the SEC does not act. In addition, the recent statement made by Commissioner Gallagher along with the FSOC's Proposed Recommendations and the FSOC members' statements increases the possibility that the SEC Commissioners may compromise and propose additional reforms without the FSOC formally recommending that they do so. Such proposals could include some version of the SEC Staff proposals supported by Chairman Schapiro or the Proposed Recommendations, but could also include redemption gating and enhanced disclosures as suggested by Commissioners Gallagher and Paredes in their

statement. Finally, a compromise package may include further study and analysis of the effectiveness of the 2010 Amendments, the need for additional regulatory reform and, perhaps most importantly, the impact that such reforms would have on those governmental and private issuers who depend on money funds to provide the short-term financing that is critical to their ability to operate.

Whether undertaken at the SEC's own initiative or at the formal recommendation of the FSOC, money fund reform will continue to be highly controversial. If undertaken without adequate consideration and analysis of the economic impact on the industry, investors, corporate issuers and state and local governments, money fund reform could end up having a more detrimental impact on the US economy than the perceived issues that the regulators are seeking to address.

Notes

1. Financial Stability Oversight Council, Proposed Recommendations Regarding Money Market Mutual Fund Reform (Nov. 13, 2012) available at *http://www.treasury.gov/initiatives/fsoc/Documents/Proposed%20Recommendations%20Regarding%20Money%20Market%20Mutual%20Fund%20Reform%20-%20November%2013,%202012.pdf*.

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

3. *See Money Market Fund Reform*, SEC Release No. IC-29132 (Feb. 23, 2010) [75 Fed. Reg. 10,060 (Mar. 4, 2010)].

4. Statement of SEC Mary L. Schapiro on Money Market Funds at the Open Commission Meeting (Jan. 27, 2010) available at *http://www.sec.gov/news/speech/2010/spch012710mls-mmf.htm*.

5. Report of the President's Working Group on Financial Markets: Money Market Fund Reform Options (Oct. 2010) available at *http://www.treasury.gov/press-center/press releases/Documents/10.21%20PWG%20Report%20Final.pdf*.

6. *See* Financial Stability Oversight Council, 2011 Annual Report, available at *www.treasury.gov/initiatives/fsoc/Pages/annual-report.aspzx*. *See also* Financial Stability Oversight Council, 2012 Annual Report, available at *http://www.treasury.gov/initiatives/fsoc/Pages/annual-report.aspx*.

7. *See* International Organization of Securities Commissions, Policy Recommendations for Money Market Funds (Oct. 2012) available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf*.

8. *See, e.g.,* Speech by Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System, at the 2012 Federal Reserve Bank of Atlanta Financial Markets Conference, Stone Mountain, Georgia (Apr. 9, 2012) available at *http://www.federalreserve.gov/newsevents/speech/bernanke20120409a.htm*.

9. Testimony of Mary L. Schapiro, Chairman, US Securities and Exchange Commission, "Perspectives on Money Market Fund Reforms," Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate (June 21, 2012) available at *http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=66f4ddb5-4823-4341-bad9-8f99cdf5fe9a*.

10. Statement of SEC Commissioner Aguilar Regarding Money Market Funds (Aug. 23, 2012) available at *http://www.sec.gov/news/speech/2012/spch082312laa.htm*.

11. Statement of SEC Commissioners Gallagher and Paredes on the Regulation of Money Market Funds (Aug. 28, 2012) available at *http://www.sec.gov/news/speech/2012/spch082812dmgtap.htm*.

12. *Id*.

13. *Id*.

14. *See* Statement of SEC Chairman Mary L. Schapiro on Money Market Fund Reform, *supra* n.2.

15. *Id*.

16. Christopher Condon, "Money Funds Test Geithner, Bernanke Resolve as Schapiro Defeated," Bloomberg (Aug. 23, 2012) available at *http://www.bloomberg.com/news/2012-08-23/money-funds-test-geithner-bernanke-resolve-as-schapiro-defeated.html*.

17. Letter from Secretary Geithner to the Financial Stability Oversight Council (Sept. 27, 2012) available at *http://www.treasury.gov/connect/blog/Documents/Sec.Geithner.Letter.To.FSOC.pdf*.

18. *Id*.

19. *Id*.

20. Letter from U.S. Chamber of Commerce to Secretary Timothy Geithner (Nov. 5, 2012) available at *http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-11.5-MMF-Letter-to-Geithner.pdf*

21. *Id*.

22. Letter from Dechert LLP to the Financial Stability Oversight Council (Nov. 1, 2012) available at *http://www.dechert.com/files/upload/2012_11_01_Letter_to_Financial_Stability_Oversight_Council.pdf*

23. Financial Stability Oversight Council, Final Rule Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21637 (Apr. 11, 2012).

24. Although a money fund may not fit within the interpretive guidance established by the FSOC (*e.g.*, the fund

may have less than $50 billion in assets), the FSOC has stated that it reserves the right to subject any nonbank financial company to further review if the FSOC believes that further analysis of the company is warranted to determine if it could pose a threat to US financial stability, irrespective of whether the company meets the thresholds in Stage 1. In addition, the FSOC has indicated that it may consider the aggregate risks posed by separate money funds that are managed by the same adviser, particularly if the money funds' investments are identical or highly similar. *See Id*.

25. Federal Reserve Board, Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies; Proposed Rule, 77 Fed. Reg. 594 (Jan. 5, 2012).

26. *Id*.

27. Eric S. Rosengren, Remarks at the Amsterdam Conference on Post-Crisis Banking: "Our Financial Structures – Are They Prepared for Financial Instability?" (June 29, 2012) available at *http://www.bos.frb.org/news/speeches/rosengren/2012/062912/062912figuresonly.pdf*.

28. *Id*.

29. *Id*.

30. Governor Daniel K. Tarullo, Remarks at the Federal Reserve Bank of San Francisco Conference on Challenges in Global Finance: The Role of Asia, San Francisco, California (June 12, 2012) available at *http://www.federalreserve.gov/newsevents/speech/tarullo20120612a.htm*.

31. Federal Reserve Board, Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies *supra* n.25.

32. Joshua Gallu and Robert Schmidt, "SEC's Gallagher Calls for Floating Price for Money Fund," *Bloomberg* (Sept. 27, 2012) available at *http://www.bloomberg.com/news/2012-09-27/sec-s-gallagher-calls-for-floating-price-for-money-market-funds.html*.

33. Christopher Condon and Robert Schmidt, "BlackRock, Fidelity Seeking Money Fund Deal With SEC," (Oct. 26, 2012) available at *http://www.bloomberg.com/news/2012-10-25/blackrock-seeks-money-fund-compromise-amid-fsoc-threat.html*.

34. *Id.* This proposal appears to be similar to a proposal previously published by BlackRock. *See* "Money Market Funds: A Path Forward," BlackRock Viewpoint (Sept. 27, 2012) available at *https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_IND&source=GLOBAL&contentId=1111173537*.

35. Scott Patterson and Andrew Ackerman, "Regulators Not Impressed By Money-Funds' Proposal," (Nov. 8, 2012) available at *http//online.wsj.com/article SB10001424127887323894704578107182645517170.html?mod=WSJ_hps_sections_markets&user=welcome&mg=id wsj*.

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