April 11, 2022

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

Re: **Securities Industry and Financial Markets Association Comments on Money Market Fund Reforms (File No. S7-22-21)**

Dear Ms. Countryman:

The Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**"),[1] together with the Securities Industry and Financial Markets Association (collectively, "**SIFMA**"),[2] respectfully submits this comment letter to the U.S. Securities and Exchange Commission (the "**Commission**") with respect to the Commission's request for comment on proposed amendments to Rule 2a-7 that govern money market funds under the Investment Company Act of 1940 ("**1940 Act**"), and related proposed amendments to Form N-MFP, Form N-CR and Form N-1A (the "**Proposed Rule**").[3] We appreciate the opportunity to provide our views to the Commission.

We believe SIFMA offers a valuable and unique perspective on the Proposed Rule because, among other things, our members represent individuals and businesses that depend on money market funds as an essential cash management tool as well as issuers who depend on money market funds to create and maintain an active and robust market for the securities they issue. As fiduciaries to millions of investors and clients and as investment managers to money market funds used as investment

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[1] SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development.

[3] Money Market Fund Reforms, Investment Company Act Release No. 34441 (Dec. 15, 2021), *available at* https://www.sec.gov/rules/proposed/2021/ic-34441.pdf [hereinafter Proposing Release].

vehicles by retail and institutional investors, SIFMA's members are committed to enhancing investor protections through reasonable regulation. Therefore, SIFMA supports the Commission's overall objective of improving the resilience and transparency of money market funds. At the same time, however, SIFMA believes that it is essential for regulation to preserve the core, valuable cash management functions that money market funds provide to various types of investors and the financial and economic functions that money market funds provide to capital markets more broadly.

SIFMA appreciates that the Commission has refrained from proposing certain reforms that SIFMA believes would destroy the utility and benefit of money market funds without addressing the unique stresses experienced by money market funds in March 2020. Yet, SIFMA remains troubled that aspects of the Proposed Rule would go too far in endangering the vitality of money market funds as a product. SIFMA is very concerned that certain of the proposed reforms would either obstruct the operation of money market funds or alter their indispensable characteristics, harming shareholders who rely on them as a cash management tool and issuers who depend on money market funds as an important source of financing. Below, we discuss the important role of money market funds in the short-term funding markets, provide our positions on the provisions of the Proposed Rule, identify potentially harmful aspects of the reforms, and recommend several modifications to the Proposed Rule with the goal of better focusing the regulations on improving the resilience of money market funds.

I. Executive Summary

The Commission has proposed the following amendments to Rule 2a-7:

- Removing liquidity fee and redemption gate provisions from Rule 2a-7
- Requiring institutional prime and institutional tax-exempt money market funds to adopt and implement swing pricing policies and procedures
- Increasing daily liquid asset and weekly liquid asset requirements to 25% and 50% of total assets, respectively
- Requiring government and retail money market funds to determine that financial intermediaries that submit orders to a money market fund have the capacity to redeem and sell the fund's shares at prices that do not correspond to a stable price per share, or, if this determination cannot be made, to prohibit the relevant financial intermediaries from purchasing the fund's shares in nominee name
- Prohibiting a money market fund from reducing the number of its shares outstanding to seek to maintain a stable share price, including through reverse distribution mechanisms ("**RDM**") or routine reverse stock splits

In addition, the Commission has solicited comment on other potential reforms for money market funds, including significant changes to required disclosures to the public and to the Commission on Forms N-MFP, N-CR, and N-1A; stress testing requirements related to portfolio liquidity; and calculations of dollar-weighted average portfolio maturity ("**WAM**") and dollar-weighted average life maturity ("**WAL**").

SIFMA members support a rulemaking package that removes redemption gate provisions from Rule 2a-7 and increases daily and weekly liquid asset requirements. SIFMA members believe such measures, taken together, most effectively address the stresses faced by money market funds in March 2020 and improve the resilience of money market funds because (i) removing redemption

gates from Rule 2a-7 will eliminate a driver of increased redemption behavior experienced in March 2020 and (ii) establishing incremental increased liquidity minimums to 20% daily liquid assets and 40% weekly liquid assets will provide adequate protection from dilution (if any). SIFMA members do not believe additional anti-dilution measures, such as swing pricing, are necessary or appropriate for money market funds, and strongly oppose the Commission's swing pricing proposal.

SIFMA members take the following general views on the following key provisions of the Proposed Rule:

- **SIFMA supports the removal of redemption gates from Rule 2a-7**. Our members view this policy measure as most directly and effectively addressing, in a practical manner, the issues that contributed to stresses on money market funds and the short-term funding markets in March 2020. Our members urge the Commission to first study the effects of removing redemption gates from Rule 2a-7 on improving the resilience of money market funds, should such proposal be adopted, before imposing additional significant regulatory requirements on money market funds.

- **SIFMA supports incremental increased liquidity minimums and believes that incremental increased liquidity minimums, together with the removal of liquidity fees and redemption gates, sufficiently address the issues faced by money market funds in March 2020**. Our members believe incremental increased liquidity minimums to 20% daily liquid assets and 40% weekly liquid assets will provide adequate protection from dilution (if any). SIFMA urges the Commission to first study the effects of increased liquidity minimums on improving the resilience of money market funds (particularly in connection with the removal of liquidity fees and redemption gates, should such proposals be adopted), prior to imposing additional significant regulatory requirements on money market funds.

- **SIFMA supports amendments to Rule 2a-7 to specify the calculations of WAM and WAL based on the percentage of each security's market value in the portfolio.** Our members agree with the Commission that such amendments will enhance the consistency of calculations for money market funds, and our members recognize that such consistency will enable the Commission to better monitor and respond to indicators of potential risk and stress in the market.

- **SIFMA strongly opposes swing pricing requirements for any type of money market fund and believes that implementing swing pricing requirements for money market funds would unnecessarily restrict investors' ability to use money market funds for their intended cash management purposes and would be ineffective in achieving the Commission's goals for reform**. Swing pricing presents significant operational impediments in implementation that impact an investor's ability to use money market funds as an effective cash management vehicle, including impediments related to key features of money market funds valued by investors such as same-day settlement and intraday liquidity. Swing pricing is inappropriate and ineffective for money market funds for a variety of reasons, including that money market funds, by design, routinely handle large redemptions without incurring transaction costs. SIFMA members are strongly opposed to the Commission's swing

pricing proposal. However, to the extent the Commission continues to believe, based on data driven findings, that an additional anti-dilution mechanism is necessary for certain types of money market funds (after imposing increased liquidity minimums), SIFMA urges the Commission to consider using fees as such a mechanism. Among other reasons, fees provide greater transparency for redeeming investors of the liquidity costs they are incurring and impose liquidity costs directly on redeeming investors without providing a discount to subscribing investors through a downward adjustment of the fund's transaction price.

- **SIFMA does not support requiring government and retail money market funds to determine that financial intermediaries that submit orders to a money market fund have the capacity to redeem and sell the fund's shares at prices that do not correspond to a stable price per share.** SIFMA is concerned that the proposal would require cost prohibitive changes to a myriad of systems that may cause intermediaries to no longer offer government and retail money market funds to their customers, causing a significant decrease in the size of the government and retail money market fund sector to the detriment of the larger short-term funding markets.

- **SIFMA does not support prohibiting a money market fund from using RDM or similar mechanisms in a negative interest rate environment to maintain a stable price per share.** Prohibiting a money market fund from reducing the number of its shares outstanding to seek to maintain a stable share price as a solution in a negative interest rate environment restricts investor choice for stable value money market funds, negatively impacts sweep programs, and may reduce the size of the government and retail money market fund sectors in such a manner that will compromise the important role such funds play in the provision of wholesale funding liquidity. RDM has been used with success in other jurisdictions and, as discussed more fully herein, our members generally believe RDM can be implemented in a manner, and with appropriate disclosure, to reduce any potential investor confusion.

We thank the Commission for the opportunity to comment on potential reform measures for money market funds. SIFMA recognizes the importance of ensuring the resilience of money market funds and the important role that all types of money market funds play in the short-term funding markets.

II. The Important Role of Money Market Funds in the Short-Term Funding Markets

Money market funds play an important role in the orderly functioning of the short-term funding markets. This role has been recognized by various regulatory authorities, including recently by the Commission in stating that money market funds "provide an important source of short-term financing for businesses, banks, and Federal, state, municipal, and Tribal governments" and "play an important role in investors' asset allocation and liquidity management."[4]

[4] *See id.* at 4, 147. *See also,* DIVISION OF ECONOMIC AND RISK ANALYSIS OF THE COMMISSION, US CREDIT MARKETS: INTERCONNECTEDNESS AND THE EFFECTS OF THE COVID-19 ECONOMIC SHOCK 24 (2020), *available at* https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf (highlighting that "[t]hrough their participation in the [short-term funding markets], [money market funds] serve an important financial and economic function for both retail

Money market funds are an attractive investment product for various types of investors and provide integral cash management solutions. Money market funds provide investors with a highly regulated product that provides the benefits of high levels of liquidity, minimal credit risks, diversity of holdings, strict maturity requirements, principal stability or low principal volatility, and a high level of transparency. Money market funds also offer investors same day liquidity, a valuable feature and benefit to many types of investors. The ability to use the amortized cost method of valuation to maintain a stable net asset value contributes to the popularity of retail and government money market funds as a popular cash management vehicle, providing tax and administrative efficiencies to such funds and their shareholders.

Money market fund investors include individual retail investors, retirement accounts, college savings plans, health savings plans, endowments, small businesses, large institutions (including corporate treasurers), pension plans, state and local governments, variable annuities, insurance companies, and nonprofit organizations. Different types of investors tend to use money market funds to meet different objectives. For example, retail investors may use money market funds for saving over a longer term, as an alternative to bank deposit accounts, or to take temporary defensive positions in declining equity markets; whereas institutional investors typically use money market funds as transactional accounts for cash management purposes. These different objectives impact investors' redemption behaviors.[5] During times of volatility (such as in March 2020) when investors are uncertain where to invest their money, money market funds provide a valuable safe haven to investors given their highly regulated structure. Money market funds provide investors with an important highly regulated alternative to bank accounts and to less regulated and less transparent liquidity vehicles. This is increasingly important to the extent that banks may be unable or unwilling to accept additional deposits due to capital requirements, as money market funds can be used to fill an important gap in the market and provide a safe, highly regulated alternative.[6]

Beyond the value of money market funds to the large variety of investors discussed above, money market funds also help support the economy through their significant investments in various high quality, short-term debt securities, including commercial paper, certificates of deposit, repurchase agreements, Treasuries, U.S. government agency debt, variable rate demand notes, state and municipal securities, and Eurodollar deposits. Many businesses and corporations manage their liquidity needs through money market funds, including managing payroll, paying office leases, and moving cash to finance daily operations. Money market funds (primarily prime money market funds) provide significant financing to businesses and financial institutions through the purchase of commercial paper, certificate of deposits, and Eurodollar deposits. Money market funds (primarily tax-exempt money market funds) also provide significant financing to state and local governments to help meet short-term financing needs through investments in variable rate demand notes issued by state and local

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and institutional investors and for the capital markets" and are an "important participant" in the short-term funding markets).

[5] Differences in redemption behavior between retail and institutional investors have been recognized previously by the Commission. *See* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014) at 241, *available at* www.sec.gov/rules/final/2014/33-9616.pdf [hereinafter 2014 Adopting Release] ("retail investors historically have behaved differently from institutional investors in a crisis, being less likely to make large redemptions quickly in response to the first sign of market stress"). As discussed in Section III.a. "Liquidity Fees and Redemption Gates," these differences in redemption behavior were also evident in March 2020.

[6] *See supra* Section III.d.iv. "Swing Pricing Will Reduce the Size of the Prime and Tax-Exempt Money Market Fund Sectors" for further discussion.

governments. Money market funds are also a source of financing for non-profit organizations, such as universities and hospitals. Further, money market funds (primarily government money market funds) provide the bulk of their funding to the federal government. Decreases in the size of the money market fund sector would likely cause the cost of financing for governments and institutions and their related projects to increase and be less efficient, thereby disrupting the flow of short-term capital to businesses and negatively impacting governments, bank and non-bank issuers, and municipalities.

As noted by Commissioner Roisman, in a far-reaching and interconnected ecosystem (like our short-term funding markets), changes to one part of the system will impact other parts as well.[7] This is particularly important in the Commission's consideration of proposed reforms to money market fund regulation. Reforms that significantly alter the structure of government, prime or tax-exempt money market funds, or make government, prime or tax-exempt money market funds an unviable option for sponsors, will result in significant harm to the overall functioning of the short-term funding markets. More specifically, reforms that further reduce the size of the money market fund sector will significantly impair available financing to businesses, corporations, financial institutions, hospitals, universities, and state and local governments, and will limit the amount and types of products available to meet investors' investment and liquidity needs. Reforms that further reduce the size of the prime or tax-exempt money market fund sectors will also significantly impact the commercial paper market by reducing the number of purchasers of commercial paper.[8] The commercial paper market is used for the financing of payrolls and accounts payable and inventories, and represents funding that is essential to maintain employment. If the commercial paper market constricts greatly because of the elimination or reduction in size of prime money market funds, the cost of financing for businesses and financial institutions is likely to increase and the access to the short-term markets will likely be compromised. This, in turn, is likely to negatively impact operations of businesses and financial institutions in a meaningful way.[9]

Moreover, if the size of the prime and tax-exempt money market fund sector further decreases (or such products are eliminated), then other potentially less regulated and less transparent vehicles

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[7] *See* Commissioner Elad L. Roisman, Statement on Proposed Money Market Fund Reforms (Dec. 15, 2021), *available at* https://www.sec.gov/news/statement/roisman-mmf-20211215.

[8] Total U.S. commercial paper outstanding as of December 31, 2021 was approximately $1,066 billion. *See* Board of Governors of the Federal Reserve System, Commercial Paper Rates and Outstanding Summary, *available at* https://www.federalreserve.gov/releases/cp/outstanding.htm. This is about one half of the all-time high in commercial paper outstanding in July 2007. Money market funds used to account for nearly 47% of the commercial paper market in September 2001. Money market fund participation in the commercial paper market has declined, particularly as the government money market fund sector increased and the prime money market fund sector decreased following fundamental reforms to Rule 2a-7 adopted in 2014. As assets in prime money market funds declined, there existed lower demand for commercial paper from money market funds. DIVISION OF INVESTMENT MANAGEMENT'S ANALYTICS OFFICE OF THE COMMISSION, PRIMER: MONEY MARKET FUNDS AND THE COMMERCIAL PAPER MARKET 2-3 (2020), *available at* https://www.sec.gov/files/primer-money-market-funds-commercial-paper-market.pdf.

[9] For examples of letters regarding the importance of money market funds to issuers and the potential risks if money market funds shrink, *see Oversight of the Mutual Fund Industry: Ensuring Market Stability and Investor Confidence: Hearing Before the Subcomm. on Capital Mkts. and Gov't Sponsored Enter. of the Comm. on Financial Serv.*, 112th Cong. 226 (2011) (Letter from James A. Kaitz, President and CEO, Association for Financial Professionals), *available at* http://financialservices.house.gov/UploadedFiles/112-42.pdf. *See also*, Joint Letter of the American Public Power Association, Council of Development Finance Agencies, Council of Infrastructure Financing Authorities, Government Finance Officers Association, International City/County Management Association, International Municipal Lawyers Association, National Association of Counties, National Association of Local Housing Financing Agencies, National Association of State Auditors, Comptrollers and Treasurers, National Association of State Treasurers, National League of Cities, U.S. Conference of Mayors, *available at* www.sec.gov/comments/4-619/4619-130.pdf.

may represent a larger portion of the front-end of the yield curve. In handling any future unforeseen market-wide liquidity or other crisis, regulators would potentially have less transparency into the front-end of the yield curve to the extent there is a smaller prime and tax-exempt money market fund sector (highly regulated vehicles) in the front-end of the yield curve. This could prove increasingly challenging to regulators and impede regulators' efforts to respond to various market events, particularly during a time of market stress.

Further significantly decreasing the size of the government, prime and tax-exempt money market fund sectors, as certain aspects of the Commission's rulemaking will do, will have real consequences for not only money market funds themselves, but also everyday individual investors, businesses, corporations, financial institutions, hospitals, universities, and governments that use money market funds for their liquidity and financing needs, and the commercial paper and short-term funding markets in general.

III. Comments on the Proposed Rule

Because changes to money market funds may have far-reaching, unintended consequences that are detrimental to shareholders and the broader short-term funding markets, SIFMA urges that any reforms be narrowly tailored to avoid unnecessary disruption. Tailoring reforms narrowly will benefit markets by easing the process of adjusting to changes, and providing a basis to evaluate the need for further actions based on the results achieved. Reforms should also be tailored in a manner to preserve the simplicity of the money market fund product and be easy to understand for investors. Overly complicated policy measures risk investor confusion and reduce the utility of the money market fund wrapper.

a. Liquidity Fees and Redemption Gates

SIFMA supports the removal of redemption gates for all types of money market funds from Rule 2a-7. SIFMA views this policy measure as the most effective means to address the specific issues that contributed to stresses on certain types of money market funds and the short-term funding markets in March 2020. SIFMA views reform measures for liquidity fees and redemption gates as an essential element of any money market fund reform package.

In 2014, the Commission adopted fundamental reforms to Rule 2a-7 that imposed various new requirements on money market funds, including providing money market funds with the ability to impose a liquidity fee or redemption gate in certain circumstances.[10] These previously enacted reforms were intended to make money market funds less susceptible to a run, provide funds with tools to address a run on the fund, and increase the overall resiliency of money market funds. As noted by the Commission, liquidity fees and redemption gates did not achieve their objectives during the period of

[10] Specifically, if, at any time, a money market fund has invested less than 30% of its total assets in weekly liquid assets, the fund may institute a liquidity fee or suspend the right of redemption temporarily if the fund's board of trustees/directors determines that the fee or suspension of redemptions is in the best interests of the fund. If, at the end of a business day, a money market fund has invested less than 10% of its total assets in weekly liquid assets, the fund must institute a liquidity fee, effective as of the beginning of the next business day, unless the fund's board of directors/trustees determines that imposing the fee is not in the best interests of the fund. Requirements related to liquidity fees and redemption gates do not apply to government money market funds. A government money market fund, however, may choose to rely on the ability to impose liquidity fees and suspend redemptions consistent with the provisions of Rule 2a-7. 17 C.F.R. § 270.2a-7(c)(2) (2021).

market stress in March 2020.[11] Access to liquidity is of great importance to money market fund investors, and the events of March 2020 highlighted the negative impact that measures that restrict access to a fund's liquidity can have on investor behavior.

Under Rule 2a-7, a liquidity fee or redemption gate may be imposed with action by a money market fund's board of trustees/directors when a fund's level of weekly liquid assets falls below 30%.[12] Under Rule 2a-7, a money market fund's level of weekly liquid assets is required to be posted on its website on a daily basis.[13] In March 2020, outflows from institutional prime money market funds increased as the level of weekly liquid assets dropped closer to 30% as institutional investors sought to avoid the potential of being invested in a fund that may impose a liquidity fee of up to 2.00% or, to a greater extent, a redemption gate.[14] This dynamic, in turn, prevented money market funds from using their weekly liquid asset liquidity buffers to meet redemptions, as money market funds feared a decrease in weekly liquid assets would further exacerbate redemptions. Requirements to maintain a minimum level of weekly liquid assets do not serve their intended purpose if money market funds are not willing or able to use liquidity buffers in times of stress. This is evidenced, in part, by the fact that the institutional money market funds that engaged in Rule 17a-9 transactions in March 2020 did so while such funds had weekly liquid assets above 30%. These money market funds engaged in Rule 17a-9 transactions to promote and provide liquidity and avoid additional redemption pressure caused by the regulatory structure enacted in the 2014 reforms. This exacerbated liquidity pressures. Tools that were included as part of the 2014 reforms to help address a run on a fund, in their current form, actually contributed to and exacerbated redemptions at a time of a market-wide liquidity crisis, creating liquidity pressures for certain prime money market funds. More specifically, linking the ability to impose liquidity fees of up to 2.00% and, to a greater extent, redemption gates to the minimum level of weekly liquid assets required under Rule 2a-7 (a figure which is publicly available each day on a fund's website) created an unintended consequence of incentivizing institutional investors to redeem as a fund's liquidity approached the threshold at which a liquidity fee or redemption gate could be imposed which would restrict their ability to access cash.

SIFMA supports the removal of redemption gates from Rule 2a-7 given how such provisions contributed to stress in the short-term funding markets in March 2020. Improving the usability of liquidity buffers and removing one element that increased redemption behavior in March 2020, as this proposal will do, will better equip money market funds to manage through times of stress and will therefore help improve the resilience and functioning of the short-term funding markets. SIFMA

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[11] *See* Proposing Release, *supra* note 3, at 28.
[12] *See* 17 C.F.R. § 270.2a-7(c)(2) (2021).
[13] 17 C.F.R. § 270.2a-7(h)(10)(ii) (2021).
[14] From March 17 to March 24, average outflows were much stronger from institutional prime money market funds with weekly liquid assets at or below 35% as compared to money market funds with weekly liquid assets above 35%, despite the fact that these funds held liquid assets above the regulatory minimum of 30% of weekly liquid assets. *See* INVESTMENT COMPANY INSTITUTE, "EXPERIENCES OF US MONEY MARKET FUNDS DURING THE COVID-19 CRISIS." REPORT OF THE COVID-19 MARKET IMPACT WORKING GROUP (2020) [hereinafter "ICI COVID Report"] *available at* www.ici.org/pdf/20_rpt_covid3.pdf. at 33. The acceleration of outflows as prime funds' weekly liquid assets fell closer to 30% has also been acknowledged by the staff of the Division of Economic and Risk Analysis of the Commission. *See* DIVISION OF ECONOMIC AND RISK ANALYSIS, US CREDIT MARKETS: INTERCONNECTEDNESS AND THE EFFECTS OF THE COVID-19 ECONOMIC SHOCK 25 (2020), *available at* https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf.

Simulations run by the Investment Company Institute further show the impact of liquidity fees and redemption gates on the depletion of a fund's weekly liquid assets. *See supra* Section III.b.ii. "Increased Liquidity Minimums" and note 22.

supports removing redemption gate provisions for all types of money market funds, as the dynamics related to liquidity fee and redemption gates that motivated redemptions in March 2020 apply regardless of the type of money market fund. Further, creating a consistent framework for all types of money market funds alleviates the potential for investor confusion.

SIFMA highlights that although the proposal would remove redemption gates from Rule 2a-7, money market funds would still have related tools available to them in certain scenarios. For example, a money market fund could still rely on Rule 22e-3 under the 1940 Act to suspend redemptions to facilitate an orderly liquidation of the fund.[15] As mentioned earlier, access to liquidity is of great importance to money market fund investors, and the events of March 2020 highlighted how the mere potential for the implementation of measures that restrict access to liquidity incentivize and increase redemption behavior. This is particularly true with respect to redemption gates, as implementation of a redemption gate would restrict an investor's access to liquidity entirely. Based on feedback from investors, investors more strongly oppose a redemption gate versus a liquidity fee. Accordingly, SIFMA supports the removal of redemption gates from Rule 2a-7 in their entirety, as the mere potential for a redemption gate in a time of market stress is likely to cause investors to preemptively redeem in times of stress out of concern that a fund may impose a gate. Our members believe Rule 22e-3 covers the circumstances for which the ability of a money market fund to impose a gate or suspend redemptions would provide benefits to money market funds and short-term funding markets, and provides an appropriate mechanism for a money market fund to suspend redemptions without incentivizing destabilizing investor redemption behavior during stress events as was experienced in March 2020 resulting from the current redemption gate provisions in Rule 2a-7.

SIFMA also supports measures that reform the use of liquidity fees under Rule 2a-7. As noted above, based on investor feedback, our members highlight that redemption gates in particular incentivized increased redemption behavior in March 2020, as investors more strongly opposed a redemption gate versus a liquidity fee. Further, investors expressed concerns related to the potential high level of a liquidity fee that could be imposed under Rule 2a-7. As more fully discussed below in Section III.d.v. "Proposed Alternatives to Swing Pricing," to the extent the Commission believes, based on data driven findings and analysis, that additional anti-dilution measures are needed to increase the resilience of public institutional money market funds, SIFMA believes that a properly calibrated and defined fee can successfully and effectively achieve such objectives as an alternative to the implementation of swing pricing measures.

With respect to the Commission's proposal to remove liquidity fees from Rule 2a-7, SIFMA highlights that money market funds would continue to have the ability to elect to impose a redemption fee under Rule 22c-2 of the 1940 Act if the fund's board of directors/trustees approves the redemption fee, in an amount (no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (no less than seven calendar days), that in the board's judgment is necessary or appropriate to eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund.[16] Accordingly, money market funds will continue to have appropriate tools to slow redemptions and reduce dilution that are able to be implemented in a manner that does

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[15] Under Rule 22e-3, a money market fund would be permitted to suspend redemptions if, among other conditions, (i) the fund, at the end of a business day, has invested less than 10% of its total assets in weekly liquid assets or, in the case of a government or retail money market fund, the fund's price per share has deviated from its stable price or the fund's board determines that such a deviation is likely to occur, and (ii) the fund's board has approved the fund's liquidation. 17 C.F.R. § 270.22e-3(a)(1)-(2).
[16] *See* 17 C.F.R. § 270.22c-2(a)(1).

not produce the unintended consequences created by liquidity fees and redemption gates under Rule 2a-7.

For the reasons discussed above, SIFMA views the removal of redemption gates from Rule 2a-7 as the policy measure presented in the Proposed Rule that has the strongest direct correlation to the cause of stresses experienced by certain types of money market funds in March 2020 and therefore the policy measure that most meaningfully addresses, in a practical manner, the issues that contributed to stresses on certain types of money market funds and the short-term funding markets. SIFMA believes removing redemption gates for all money market funds from Rule 2a-7 is the most effective way to improve the resilience of money market funds.

b. Increased Liquidity Requirements, Board and Commission Reporting, and Stress Testing[17]

SIFMA supports the Commission's overall goal of providing a stronger liquidity buffer for money market funds to meet redemptions during periods of market stress through higher liquidity requirements. SIFMA believes *incremental* increased liquidity requirements to 20% daily liquid assets and 40% weekly liquid assets, in connection with the removal of liquidity fees and redemption gates from Rule 2a-7, adequately and effectively addresses the stresses faced by money market funds in March 2020, improves the resiliency of money market funds, and renders anti-dilution mechanisms such as swing pricing unnecessary.

i. Proposed Requirements

Under the Proposed Rule, daily and weekly liquid asset requirements would increase to 25% and 50% of total assets, respectively.[18] Currently, Rule 2a-7 requires that a money market fund, immediately after acquisition of an asset, hold at least 10% of its total assets in daily liquid assets and at least 30% of its total assets in weekly liquid assets. The Proposed Rule would also require a money market fund to notify its board of directors/trustees and publicly file on Form N-CR with the Commission when the fund has invested less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets (a "liquidity threshold event") within one business day of the liquidity threshold event, followed by a brief description of the facts and circumstances that led to the liquidity threshold event within four business days after its occurrence.

Additionally, the Commission has proposed amendments to stress testing requirements that would require money market funds to test whether they are able to maintain sufficient minimum liquidity under specified hypothetical events listed in Rule 2a-7.[19] Each money market fund would be

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[17] Our members have individual views regarding the appropriate level of any increased liquidity requirements and intend to submit those in individual comment letters.

[18] Daily liquid assets are defined as: cash; direct obligations of the U.S. Government; certain securities that will mature (or be payable through a demand feature) within one business day; or amounts unconditionally due within one business day from pending portfolio security sales. *See* 17 C.F.R. § 270.2a-7(a)(8) (2021). Weekly liquid assets are defined as: cash; direct obligations of the U.S. Government; agency discount notes with remaining maturities of 60 days or less; certain securities that will mature (or be payable through a demand feature) within five business days; or amounts unconditionally due within five business days from pending security sales. *See* 17 C.F.R. § 270.2a-7(a)(28) (2021).

[19] These hypothetical events include, but are not limited to: (A) increases in the general level of short-term interest rates, in combination with various levels of an increase in shareholder redemptions; (B) an event indicating or evidencing credit deterioration, such as a downgrade or default of particular portfolio security positions, each representing various portions of

required to determine the minimum level of liquidity it seeks to maintain during stress periods, identify that liquidity level in its written stress testing procedures, periodically test its ability to maintain such liquidity, and provide the fund's board with a report on the results of the testing.

ii. Increased Liquidity Minimums

SIFMA supports *incremental* increases in liquidity requirements to 20% daily liquid assets and 40% weekly liquid assets, and views an increase in liquidity requirements, along with the removal of liquidity fees and redemption gates, as adequately and effectively addressing the stresses faced by money market funds in March 2020 and making money market funds more resilient in times of stress. Together with the removal of liquidity fees and redemption gates, these changes preclude the need to adopt additional anti-dilution measures (in particular, swing pricing), which will have the unintended consequence of making money market funds unviable as an investor choice and pushing investors to seek other alternatives for cash management that may be less suitable and fraught with different risks.

In addressing the reasons for the Commission's proposal, the Commission notes that although only one institutional prime fund reported weekly liquid assets below the 30% threshold, it is likely that other funds would have breached daily liquid asset or weekly liquid asset thresholds at the time if they had used daily liquid assets or weekly liquid assets to meet redemptions. The Commission further notes that some money market funds experienced redemption levels that would have depleted required levels of daily liquid assets or weekly liquid assets, if those assets had been used to meet such redemptions. Lastly, the Commission also states that because the fee and gate provisions in Rule 2a-7 incentivized money market funds to maintain weekly liquid assets above the current threshold, the proposed removal of the fee and gate provisions from Rule 2a-7 could have the effect of reducing fund liquidity levels by eliminating such incentives.[20]

While SIFMA supports *incremental* increases to liquidity requirements, together with the removal of liquidity fees and redemption gates, as the best solution to address the stresses faced during March 2020, SIFMA believes certain of the underlying premises used by the Commission discussed above deserve additional context. First, with respect to breaching liquidity thresholds, daily and weekly liquidity requirements are an "acquisition" test, meaning that such requirements are tested at acquisition and a subsequent drop below the required minimum is not a breach of Rule 2a-7. Testing liquidity at acquisition enables a money market fund to use its liquidity buffer most effectively for its intended purpose.[21] To the extent the Commission believes other money market funds were likely to

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the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions; (C) a widening of spreads compared to the indexes to which portfolio securities are tied in various sectors in the fund's portfolio (in which a sector is a logically related subset of portfolio securities, such as securities of issuers in similar or related industries or geographic region or securities of a similar security type), in combination with various levels of an increase in shareholder redemptions; and (D) any additional combinations of events that the adviser deems relevant. *See* 17 C.F.R. § 270.2a-7(g)(8)(i) (2021).

[20] *See* Proposing Release, *supra* note 3, at 88.

[21] In adopting the current liquidity requirement in Rule 2a-7, the Commission stated:

> As we explained in the Proposing Release, current liquidity standards applicable to money market funds presume that a fund is able to find a buyer of its securities. [footnote omitted]. Our new approach would include as a "daily liquid asset" or "weekly liquid asset" only cash or securities that can readily be converted to cash...[t]hus, a fund should be able to use those assets to pay redeeming shareholders even in market conditions (such as those that occurred in September and October 2008) in which money market funds cannot rely on a secondary or dealer market to provide immediate liquidity.

Money Market Fund Reform, Investment Company Act No. 29132 at 57 (Feb. 23, 2010), *available at*

drop below 30% weekly liquid assets due to redemptions, this is not fact a "breach" of the Rule 2a-7 liquidity provisions. Rather, this would have been a money market fund using its liquidity buffers for its intended purpose (to meet redemptions with available liquidity). However, as discussed previously, money market funds were prevented from using their liquidity buffers for their intended purpose due to the unintended consequences created by Rule 2a-7's redemption gate provisions. Our members support continuing to test liquidity at acquisition, as this best enables money market funds to use their liquidity buffers to meet redemptions. SIFMA agrees with the Commission that any regulatory amendments should allow money market funds to deploy their excess liquidity during times of market stress, when such liquidity is typically needed most.

Second, it is important to fully consider the impact of redemption gates in the context of the Commission's statement that some money market funds experienced redemption levels that would have depleted required levels of daily liquid assets or weekly liquid assets, if they had been used. As noted above under "Liquidity Fees and Redemption Gates," the mere potential of the imposition of a redemption gate increased redemption behavior. Therefore, using raw redemption figures from March 2020, without qualification regarding how liquidity fees and, to a greater degree, redemption gates (as currently implemented in Rule 2a-7) increased those figures, does not provide the complete context under which the Commission should analyze the need for increased liquidity requirements or other related reform measures. The Investment Company Institute has run simulations using data on the average daily percent change in assets of institutional and retail prime money market funds from March 17–March 24, 2020 that show simulated total assets and weekly liquid assets of a hypothetical institutional prime money market fund under two scenarios: (1) where an institutional prime money market fund has the option of imposing liquidity fees or redemption gates if the fund's weekly liquid assets fall below 30%, and (2) where an institutional prime money market fund does not have the option of imposing liquidity fees or redemption gates. The simulation shows that under the first scenario (with liquidity fees and redemption gates), the money market fund depletes its weekly liquid assets at a much quicker pace, a rate that indicates the fund's weekly liquid assets are nearly depleted within two weeks. Under the second scenario (no liquidity fees or redemption gates), the institutional prime money market fund's weekly liquid assets fell gradually, and three weeks after the start of redemptions, the fund's weekly liquid assets are still substantially at nearly 30%.[22] This is an important lens through which to view the need for increased liquidity requirements or other reform measures, particularly given the proposed removal of liquidity fees and redemption gates from Rule 2a-7. Given the severe impact of redemption gates on money market funds and liquidity management, SIFMA encourages the Commission to first analyze how money market funds react and operate under proposals that would remove redemption gates before imposing significant additional reforms.

Third, while the Commission's proposal may result in money market funds being managed closer to required minimum liquidity levels, this would largely be a result of increases in minimum liquidity requirements (to such a degree that maintaining additional liquidity above such requirements is not necessary to meet redemptions), rather than as a result of the removal of redemption gates from Rule 2a-7 eliminating incentives to maintain weekly liquid assets above the current threshold. This can be analyzed by reviewing the behavior of money market funds following the 2010 amendments to Rule 2a-7 (adopting liquidity minimums) and before the 2014 amendments to Rule 2a-7 (adopting liquidity

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https://www.sec.gov/rules/final/2010/ic-29132.pdf.
In fact, prior to the adoption of liquidity fees and redemption gates, it was not uncommon at times for a money market fund to drop below 30% of weekly liquid assets in the normal course of meeting redemptions, and then simply rebuild its liquidity buffer in normal course without issues meeting shareholder redemptions.

[22] *See* ICI COVID-19 REPORT, *supra* note 14, at 35.

fee and redemption gate requirements). For example, since 2010, prime money market funds' weekly liquid assets (as a percentage of their portfolios) have exceeded the 30% minimum on average by 12 to 15 percentage points. From 2010 to 2013 (prior to the adoption of liquidity fees and redemption gates), weekly liquid assets for institutional prime money market funds and retail prime money market funds averaged approximately 42% and 39% of such funds' assets, respectively, which is significantly higher than the 30% minimum weekly liquid assets threshold (as a percentage of their portfolios).[23] As discussed above, the removal of redemption gates will increase a fund's ability to more effectively use its liquidity buffer as intended from time to time (and therefore a fund may have invested less than the required liquidity minimum in the ordinary course of liquidity management at certain times). As shown from liquidity data prior to the adoption of liquidity fees and redemption gates, this does not mean that, on average, the removal of redemption gates would cause money market funds to be managed significantly closer to minimum liquidity requirements in the normal course of business. Furthermore, money market funds will remain subject to the general liquidity requirement of Rule 2a-7 to hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of its obligations under Section 22(e) of the 1940 Act and any commitments the fund has made to shareholders. Depending upon the volatility of its cash flows (particularly shareholder redemptions), this general liquidity requirement may require a fund to maintain greater liquidity than would be required by daily and weekly minimum liquidity requirements.[24] Moreover, a money market fund's levels of weekly liquid assets are publicly available on a fund's website. As liquidity is of utmost importance to investors, it is generally not expected that investors will completely eliminate their focus on weekly liquid asset levels simply because redemption gates have been removed from Rule 2a-7. For these reasons, imposing a higher minimum, as a practical matter, could potentially result in a de facto higher minimums than imposed by regulations. To the extent that money market funds are managed closer to required liquidity minimums, however, this is likely the result of the Commission's proposal to increase minimum liquidity requirements to such an extent that maintaining even greater liquidity above such minimum requirements is simply unnecessary to effectively manage liquidity and redemptions, rather than as a result of the removal of redemption gates incentivizing money market funds to hold a lower level of liquidity.[25]

While supportive of *incremental* increased liquidity requirements, our members would like to highlight that imposing a higher weekly liquid asset minimum could have negative unintended consequences. Specifically, imposing a higher minimum level of weekly liquid assets could decrease money market fund yields and reduce the spread between prime and government money market funds. These consequences could then, in turn, shrink the size of the prime money market funds by decreasing investor demand for such products. This could then increase the cost of funding to issuers.[26] Further, increasing liquidity requirements for prime money market funds makes money market fund products more homogenous and reduces differentiators among different types of money market funds. This, in turn, reduces investor choice. In considering the appropriate level of increased

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[23] *See* ICI COVID-19 REPORT, *supra* note 14, at 23.

[24] *See* Money Market Fund Reform, Investment Company Act No. 29132 at 51 (Feb. 23, 2010), *available at* https://www.sec.gov/rules/final/2010/ic-29132.pdf.

[25] Members note that the Commission has described the current 30% weekly liquid asset minimum as "a substantial amount of internal liquidity" that allows a fund to satisfy redemption requests through internally generated cash and not through asset sales. *See* 2014 Adopting Release, *supra* note 5, at 88.

[26] *See* discussion *supra* Section II. "The Important Role of Money Market Funds in the Short-Term Funding Markets" for a more comprehensive discussion of the potential consequences of reducing the size of the prime money market fund industry.

liquidity, SIFMA encourages the Commission to consider these matters, along with the context provided earlier in this section related to the impact of liquidity fees and redemption gates on liquidity.

Higher weekly liquid asset levels provide investors with confidence that money market funds hold adequate liquidity during periods of market uncertainty, thereby reducing the likelihood of a run. Accordingly, SIFMA views an *incremental* increase in the weekly liquid asset requirement, along with the removal of liquidity fees and redemption gates, as adequately and effectively addressing the stresses faced by money market funds in March 2020 and making money market funds more resilient in times of stress.

Further, in considering the appropriate level of liquidity minimums, SIFMA highlights the different redemption behavior of retail investors and urges the Commission to consider whether an increase in liquidity minimums (or as large of an increase) is necessary to the same extent as other types of money market funds. Different types of money market funds experienced different levels of flows in response to the market-wide liquidity crisis in March 2020.[27] Retail money market funds performed well during the period of market stress in March 2020 and proved very resilient. Retail money market funds experienced modest outflows in March 2020. Retail prime money market funds experienced net redemptions of 9% (approximately $40 billion) during the two-week period March 13 to March 26, and tax-exempt money market funds[28] experienced net redemptions of 8% (approximately $11 billion) during the two-week period March 12 to March 25.[29] In comparison, public institutional prime money market funds experienced net redemptions of 30% (approximately $100 billion) during the two-week period March 11 to March 24. Differences in redemption behavior between retail and institutional prime investors have been recognized previously and should be taken into account in crafting a policy response to the events in March 2020.[30] Historically, retail prime money market funds have not suffered the same level of volatility or liquidity pressures as institutional money market funds in times of market stress because retail investors use money market funds as a longer term investment strategy for their cash and not as short-term transactional cash management vehicle. Policy measures should be

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[27] The time periods used in this section provide data for the largest outflows experienced by different types of money market funds during a given two-week period. These two-week periods may be different for different types of money market funds. Outflows for prime and tax-exempt money market funds peaked on March 17, 2020 and March 23, 2020, respectively. *See* Proposing Release, *supra* note 3, at 15. *See also,* PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, OVERVIEW OF RECENT EVENTS AND POTENTIAL REFORM OPTIONS FOR MONEY MARKET FUNDS 20 at n. 10 (2020), *available at* https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf. The Federal Reserve announced the Money Market Mutual Fund Liquidity Facility for prime money market funds on March 18, 2020 and announced the extension of the Money Market Mutual Fund Liquidity Facility to tax-exempt money market funds on March 20, 2020. Board of Governors of the Federal Reserve System, *Money Market Mutual Fund Liquidity Facility* (last updated Mar. 11, 2021), https://www.federalreserve.gov/monetarypolicy/mmlf.htm.

[28] Most, but not all, tax-exempt money market funds are retail money market funds. *See* Proposing Release, *supra* note 3, at 15. *See also,* Investment Company Institute, *Money Market Fund Assets* (Apr. 8, 2021), https://ici.org/research/stats/mmf/mm_04_08_21. *See also*, Proposing Release *supra* note 3, at 15.

[29] *See* Proposing Release, *supra* note 3, at 15. *See also,* PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, OVERVIEW OF RECENT EVENTS AND POTENTIAL REFORM OPTIONS FOR MONEY MARKET FUNDS 14-15 (2020), *available at* https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf.

[30] Differences in redemption behavior between retail and institutional investors have been recognized previously by the Commission. *See* 2014 Adopting Release, *supra* note 5, at 214 ("retail investors historically have behaved differently from institutional investors in a crisis, being less likely to make large redemptions quickly in response to the first sign of market stress"). As noted above, these differences in redemption behavior were also evident in March 2020. *See also*, Proposing Release, *supra* note 3, at 61 ("[retail] funds historically have had smaller outflows than institutional funds during times of market stress, including during March 2020").

tailored to reflect the difference in investor redemption behavior of the different types of money market funds.

iii. Board and Commission Reporting; Stress Testing

With respect to board and Commission reporting, SIFMA generally supports efforts related to increased oversight, monitoring, and transparency. As a practical matter, our members note that current policies and procedures typically already include provisions to report to the board at specified levels of liquidity. With respect to requiring a public filing on Form N-CR upon a money market fund crossing a specified level of liquidity, our members raise significant concerns that such a public filing would signify to investors that there is a material liquidity issue in the fund and cause investor panic and increased redemptions, regardless of whether there is in fact a liquidity issue in the fund. SIFMA notes that money market funds are already required to post their daily levels of liquidity on their website, providing investors with access to such information on a daily basis. In fact, the Commission notes that some portals through which investors invest have alerts to identify when a money market fund's reported liquidity levels decline, which facilitates rapid redemptions when a fund's liquidity begins to decline.[31] Accordingly, requiring a public filing once a money market fund crosses a certain liquidity threshold does not provide investors with information that they do not otherwise have, and does nothing more than potentially cause investors to increase redemption activity. Although the Commission's proposal includes a brief description of the facts and circumstances leading to the liquidity threshold event to be included in the filing, our members believe the mere filing on Form N-CR for a liquidity threshold event would increase redemption behavior regardless of any description in the filing.

Having observed the unintended consequences of threshold effects related to liquidity fees and redemption gates on redemption behavior in March 2020 (despite the fact that money market funds were permitted, but not required, to implement fees or gates upon crossing 30% of weekly liquid assets), SIFMA urges the Commission not to adopt the proposed amendment to Form N-CR that would require a public filing upon crossing a specified level of liquidity. To the extent the Commission finds it would be useful to the Commission to be provided with notice once a money market fund crosses a certain level of liquidity to monitor significant declines in liquidity, without having to monitor each money market fund's website, SIFMA suggests revising the proposed filing requirement to have such information submitted to the Commission on a confidential basis.

SIFMA has no objections to the revisions to stress testing requirements proposed by the Commission. SIFMA agrees that the proposed approach may improve the utility of stress test results by reflecting whether the fund is able to maintain the level of liquidity the fund considers sufficient, which may differ among funds for a variety of reasons (e.g., type of money market fund or characteristics of investors, such as investor concentration or composition that may contribute to large redemptions).

c. WAM and WAL Calculations

SIFMA supports amendments to Rule 2a-7 to specify the calculations of WAM and WAL based on the percentage of each security's market value in the portfolio. This proposed amendment will provide clarity to money market funds regarding the manner in which such calculations should be

[31] *See* Proposing Release, *supra* note 3, at 59.

made. Our members agree with the Commission that such amendments will enhance the consistency of calculations for money market funds, and recognize that such consistency will enable the Commission to better monitor and respond to indicators of potential risk and stress in the market.

d. Swing Pricing[32]

SIFMA strongly opposes swing pricing for money market funds. Swing pricing is not necessary for money market funds and is not an effective anti-dilution mechanism for money market funds due to the manner in which money market funds typically meet redemptions and the way money market funds are managed. Swing pricing is at odds with fundamental core tenets of the money market fund wrapper, such as minimizing principal volatility and access to liquidity. Swing pricing requirements will not help improve the resilience of money market funds or address the issues that contributed to stresses on money market funds in March 2020. **Simply put, swing pricing is neither compatible with, nor appropriate for, cash management products like money market funds.**

Before adopting sweeping new regulatory requirements with the potential to significantly impair the utility of money market funds and reduce the size of the prime and tax-exempt money market fund sectors, SIFMA urges the Commission to first study the effects of other aspects of the proposal on improving the resilience of money market funds, such as the removal of liquidity fees and redemption gates and increased liquidity requirements, should such proposals be adopted.

In the following sections, we: (i) review the Commission's proposed swing pricing requirements; (ii) highlight why swing pricing is ineffective, inappropriate, and unnecessary for money market funds; (iii) discuss the significant operational challenges presented by swing pricing that undermine the utility of money market funds for investors, restrict liquidity access, and make swing pricing infeasible; (iv) discuss the negative consequences of the effect of swing pricing on reducing the size of the prime and tax-exempt money market fund sectors; (v) present proposed alternative fee frameworks to swing pricing, to the extent the Commission believes, backed by analysis and data, that money market funds experience dilution in a manner that requires an anti-dilution mechanism; and (vi) discuss the appropriate scope of the types of money market funds covered under any anti-dilution policy measures.

i. Proposed Requirements

As explained in the Proposing Release, swing pricing is a process of adjusting a fund's current net asset value with the intention that the transaction price effectively passes on costs stemming from shareholder transaction flows out of the fund to shareholders associated with that activity. Under the Proposed Rule, any time an institutional money market fund has net redemptions of any amount during a pricing period (including routine or known redemptions during normal market conditions), the fund would be required to calculate a "swing factor" and adjust its current net asset value per share by such swing factor. The proposed swing pricing requirement would not apply to net subscriptions for money market funds.

In determining whether the money market fund has net redemptions for a pricing period and the amount of net redemptions, the fund's swing pricing administrator would be permitted to make

[32] Comments and positions herein regarding swing pricing are focused on money market funds and are not being made in the context of other open-end mutual funds.

such determination based on receipt of sufficient investor flow information for the pricing period to allow the fund to reasonably estimate whether it has net redemptions and the amount of net redemptions. This investor flow information may include reasonable estimates where necessary.

An institutional money market fund's swing factor would vary based on the level of net redemptions during a pricing period. Under the Proposed Rule, any time an institutional money market fund has net redemptions during a pricing period, regardless of the amount of net redemptions, the fund would be required to adjust its current net asset value per share by a swing factor reflecting spread and transaction costs (i.e., brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio security sales), as applicable, from selling a vertical slice of the portfolio to meet those net redemptions. If the institutional money market fund has net redemptions for a pricing period that exceed the "market impact threshold," which would be defined as 4% of the fund's net asset value divided by the number of pricing periods the fund has in a business day, or such smaller amount of net redemptions as the swing pricing administrator determines, the swing factor would also include market impacts. The money market fund would estimate market impacts for each security in its portfolio by first estimating the market impact factor, which would be the percentage decline in the value of the security if it were sold, per dollar of the amount of the security that would be sold, under current market conditions. Then, the money market fund would multiply the market impact factor by the dollar amount of the security that would be sold if the fund sold a pro rata amount of each security in its portfolio to meet the net redemptions for the pricing period. The Proposed Rule would permit a money market 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.[33] The Proposed Rule does not include an upper limit on a money market fund's swing factor.

The "pricing period" would be defined, in substance, to mean the period of time in which an order to purchase or sell securities issued by the money market fund must be received to be priced at the next computed net asset value. The Commission states that this is designed to address money market funds that compute their net asset values multiple times per day.

Under the Proposed Rule, a money market fund's swing pricing policies and procedures would be implemented by a board-designated administrator (the "swing pricing administrator"). The swing pricing administrator would be defined as the money market fund's adviser or officer(s) responsible for administering the swing pricing policies and procedures. Administration of the swing pricing program must be reasonably segregated from portfolio management of the fund and may not include portfolio managers. The Proposed Rule also includes non-delegable requirements related to board oversight of swing pricing.[34]

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[33] The Commission has stated that it would be reasonable to apply a market impact factor of zero to the money market fund's daily and weekly liquid assets because a fund could reasonably expect such assets to convert to cash without a market impact to fulfill redemptions (e.g., because the assets are maturing shortly).

[34] A money market fund's board, including a majority of directors/trustees who are not interested persons of the fund, would be required to (1) approve the fund's swing pricing policies and procedures; (2) designate the swing pricing administrator; and (3) review, no less frequently than annually, a written report prepared by the swing pricing administrator describing the adequacy and effectiveness of the program.

ii. Swing Pricing is Ineffective, Inappropriate, and Unnecessary for Money Market Funds

1. Swing Pricing is Not Reflective of How Money Market Funds Manage Liquidity, Flows, and Redemptions

Money market funds, by design, are intended to handle large amounts of flows as such funds are used for daily cash management purposes. In fact, money market funds frequently handle large redemptions and typically know when to expect such redemptions. As such, money market funds typically let securities mature to meet redemptions and therefore do not incur transaction costs, or incur very minimal transaction costs. For example, money market funds can typically anticipate and expect a certain volume of flows leading up to tax deadlines. In anticipation of such flows and to effectively manage the money market fund's liquidity, the money market fund will typically increase its liquidity buffer in order to meet those redemptions.[35] Further, money market funds already have tools in place to assist them in anticipating redemption behavior and its impact on fund liquidity. As part of the Commission's reforms adopted in 2010, money market funds maintain "know your customer" procedures under Rule 38a-1 of the 1940 Act to consider investor characteristics and their likely redemption behavior.[36] This further enables money market funds to anticipate redemption behavior and meet redemptions with liquidity through maturing assets. The proposed swing pricing requirement would apply during normal market conditions, including when a money market fund is handling routine or known redemptions for which the money market fund has prepared and built up its liquidity buffer. This is unnecessary given the effective tools money market funds already have in place and effectively penalizes shareholders for using the money market fund for its intended purpose (daily cash management), while also failing to achieve the anti-dilutive goals of swing pricing insofar as the money market fund was able to meet all redemption with available liquidity without having to sell less liquid assets.

By the very nature of the money market fund wrapper, money market funds invest in highly liquid, short-term positions, including positions that are invested on an overnight basis. As a result, the level of transaction costs associated with money market fund trading is much lower than transaction costs of other mutual fund trading due to the types of securities in which money market funds invest such that any swing factor is likely to be too small to meaningfully impact a money market fund's net asset value. Because transaction costs (and, therefore, any dilutive effect) are typically low, this does not generally create incentives for shareholders to redeem quickly to avoid losses. As such, it is unnecessary to impose swing pricing requirements, particularly where the assumption is that net redemptions require incurring transaction costs to meet them, when in fact in many instances net redemptions can be met without any such costs. Moreover, the Commission's proposal requires money market funds to swing their net asset values by a swing factor reflecting spread and transaction costs from selling a vertical slice of the portfolio to meet those net redemptions. As noted above, this is not representative of how money market funds meet redemptions (typically, with available liquidity from maturing assets). Therefore, the Commission's proposal has the potential to pass costs onto redeeming shareholders that

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[35] As noted above, money market funds routinely have investments in instruments that mature in a short period of time. As a result, money market funds routinely have assets maturing on every single day, allowing them to meet redemption requests without incurring any transaction costs.

[36] *See* Money Market Fund Reform, Investment Company Act Release 29132 (Feb. 23, 2010) at 53, *available at* https://www.sec.gov/rules/final/2010/ic-29132.pdf.

were not in fact incurred. This unnecessarily penalizes redeeming investors simply for exercising their rights of redemption.

The Commission justifies the swing pricing proposal through conclusory statements that "activity and other changes in portfolio holdings associated with meeting redemptions may impose costs, including trading costs and costs of depleting a fund's daily or weekly liquid assets" and that such costs "can dilute the interests of non-redeeming shareholders."[37] The Proposing Release does not, however, quantify specific costs associated with meeting money market fund redemptions and resulting dilution, if any. In the economic baseline discussing dilution, the Proposing Release compares the dilution attributed to trading costs that occurs when a fund trades to meet redemptions after its net asset value is struck with the dilution attributed to trading costs that occurs if a fund is able to trade to accommodate investor redemptions/subscriptions prior to the net asset value strike. The example assumes that a fund holds a single asset whose value is constant, but liquidating the asset incurs a spread/haircut of 10%. The Commission specifically notes that the haircut assumption is illustrative and that haircuts on assets in money market funds tend to be much smaller, but that the illustration is intended to show the impact of large redemptions on dilution of non-redeeming investors.[38] Our members question the basis for assertions that money market funds experience dilution in a manner that requires an anti-dilution measure such as swing pricing, particularly where the Commission is using illustrative assumptions that are not tailored specifically to money market funds. To the extent that a calculation methodology uses incorrect assumptions or overstates the actual transaction costs associated with redemptions, redeeming shareholders would be subsidizing remaining shareholders. This is a result at odds with the Commission's mission of investor protection.

Further, to justify the proposed market impact threshold, the Proposing Release states that "when daily net redemptions reach 4%, most funds may experience significant market impact if they were to sell a pro-rata share of their portfolio holdings to meet redemptions."[39] The Proposing Release does not provide additional data or support for this conclusory statement regarding experiencing market impact. SIFMA urges a data driven approach tailored to the experiences of money market funds with respect to any proposed amendments to Rule 2a-7 (taking into account money market fund holdings and how money market funds typically meet redemptions) in order to justify statements about the trading costs and market impacts incurred by money market funds and shareholder dilution, if any.[40]

Furthermore, investors would not know whether a swing factor was being applied at the time they place their order. This reduces shareholder transparency, reduces the utility of money market funds as a cash management tool insofar as it introduces additional uncertainty and potential volatility into a fund's share price, and negates the potential for swing pricing to impact investor behavior as investors would not know at the time of purchase or redemption whether swing pricing will be applied.

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[37] Proposing Release, *supra* note 3, at 45.
[38] *See id.* at 155-56.
[39] *See id.* at 218.
[40] As more fully discussed in Section II.a. "Liquidity Fees and Redemption Gates," in developing a data driven approach, it is important to fully consider the impact of liquidity fees and redemption gates on data from March 2020 as the mere potential of the imposition of a liquidity fee or redemption gate increased redemption behavior. Therefore, using raw redemption figures from March 2020, without qualification regarding how liquidity fees and redemption gates increased those figures, does not provide the complete context under which the Commission should analyze transaction costs and dilution of non-redeeming shareholder interests, if any.

The uncertainty introduced by swing pricing is likely to drive investors away from the money market product altogether.

Based on the reasons and benefits for implementing swing pricing discussed above, swing pricing simply does not make sense for money market funds and swing pricing is, therefore, unlikely to address any liquidity issue that arose in March 2020. Generally, investors redeeming in times of stress are doing so because of a need to access cash (for reasons unrelated to a liquidity issue in a fund). Swing pricing is more likely to deter investors from entering money market funds in the first place rather than deter investors who are already in that money market fund from redeeming. Accordingly, our members do not believe it is likely that swing pricing will meaningfully impact investor behavior as intended by the Commission during times of liquidity stress.

2. Swing Pricing is Fundamentally At Odds with the Objective of Money Market Funds to Minimize Principal Volatility

Money market funds are intended to provide investors with principal stability and minimize principal volatility. This remains true even with money market funds that float their net asset values, as the portfolio limitation provisions of Rule 2a-7 are intended to minimize principal volatility.[41] In fact, the Commission had previously recognized that swing pricing may not be appropriate for money market funds because the funds' investors (including investors in a floating net asset value money market fund) are sensitive to price volatility.[42] The Commission notes that risk averse investors that prefer net asset value stability may have already shifted to government money market funds or bank accounts around the 2016 implementation of money market fund reforms.[43] While we agree that certain investors may have shifted into other products as a result of the implementation of a floating net asset value, our members also note that institutional investors that are currently invested in institutional prime and institutional tax-exempt money market funds use such funds for cash management and remain sensitive to net asset value adjustments. Swing pricing introduces the potential for an additional level of volatility and variation into a fund's share price that our members believe will result in an additional shift away from institutional money market funds. Introducing a regulatory requirement that increases the potential for principal volatility in a product that is intended to minimize principal volatility is fundamentally at odds and incompatible with the core tenets of a money market fund wrapper.

3. Other Aspects of the Proposed Rule Make Swing Pricing Further Unnecessary for Money Market Funds

The Commission states that the swing pricing proposal complements the proposal to require money market funds to hold additional liquidity by requiring redeeming investors to pay the cost of depleting a fund's liquidity. We disagree. The Commission's proposed increased liquidity requirements do not complement the proposed swing pricing requirements; rather, the Commission's proposed increased liquidity requirements further eliminate or reduce any potential need for, or benefit of, swing pricing. The proposed increased liquidity requirements provide protection from dilution (if any)

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[41] In fact, Rule 2a-7 requires stress testing of a money market fund's ability to minimize principal volatility. *See* 17 C.F.R. § 270.2a-7(g)(8)(i) (2021).

[42] Investment Company Swing Pricing, Investment Company Act Release No. 32316 at 25 (Oct. 13, 2016), *available at* https://www.sec.gov/rules/final/2016/33-10234.pdf.

[43] Proposing Release *supra* note 3, at 183.

without the need for swing pricing. With increased liquidity requirements, money market funds (including institutional money market funds) will be even less likely to have redemptions of a size that would deplete the increased liquidity buffers as required by the Proposed Rule.[44]

The removal of redemption gates from Rule 2a-7 further negates the need for swing pricing requirements. The Commission states that institutional investors frequently scrutinize liquidity levels in money market funds, and some portals through which they invest even have alerts to identify when a fund's reported liquidity levels decline, facilitating rapid redemptions when a fund's liquidity begins to decline. The Commission therefore believes that swing pricing would help institutional money market funds equitably allocate costs that may result from these redemptions.[45] SIFMA highlights, however, that investors' increased redemption behavior in March 2020 as weekly liquid assets dropped closer to 30% was directly related to fears of a redemption gate being imposed. By removing redemption gates from Rule 2a-7, the Commission would be removing an incentive for investors to rapidly redeem as liquidity reached a specified level for which an alert was set.

Further, before the adoption of liquidity fee and redemption gate requirements, money market funds more effectively used their liquidity buffers to manage redemptions without engaging in secondary market sales. With the removal of redemption gates from Rule 2a-7 and reform measures related to liquidity fees, it is likely managers will feel more comfortable using available liquidity from the fund's daily liquid assets and weekly liquid assets to meet redemptions in times of stress, without engaging in secondary market sales that could result in liquidity costs. This, in turn, reduces the Commission's perceived need for swing pricing to address costs resulting from redemptions. Any data or testing used to determine the need for an anti-dilution mechanism such as swing pricing should take into consideration the potential impact of other aspects of the Commission's rulemaking that may further decrease dilutive effects associated with money market fund redemptions (if any).

As discussed above under "Liquidity Fees and Redemption Gates," there were significant, detrimental unintended consequences for money market funds and the larger short-term fund markets resulting from the adoption of liquidity fee and redemption gate requirements, as currently implemented in Rule 2a-7. We highlight below the various significant operational challenges and potential consequences of the proposed swing pricing regime. Rather than rush into adopting regulatory requirements that impose significant costs on both investors and sponsors and have the potential for significant irreversible consequences, SIFMA strongly urges the Commission to first study the effects on money market funds of the removal of redemption gates from Rule 2a-7 along with increased liquidity requirements, should such proposals be adopted. Only after gathering appropriate data following those changes to Rule 2a-7, should the Commission determine whether there is a need to impose swing pricing or other similar anti-dilution mechanism.[46]

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[44] As discussed in more detail in Section II.b.ii. "Increased Liquidity Minimums," in analyzing the effectiveness of increased liquidity requirements (and the need for additional anti-dilution measures) in the context of whether funds are likely to have redemptions that would deplete liquidity buffers, SIFMA encourages the Commission to consider redemption behavior and size without the effect of liquidity fees and redemption gates that exacerbated and increased the amount and size of redemptions in March 2020.

[45] Proposing Release *supra* note 3, at 59.

[46] Alternatively, similar to the approach for other open-end mutual funds under Rule 22c-1, the Commission could permit, but not require, money market funds to implement swing pricing.

iii. Swing Pricing Poses Significant Operational Challenges That Undermine the Utility of Money Market Funds for Investors, Restrict Liquidity Access, and Make Swing Pricing Infeasible

Money market funds serve as valuable cash management vehicles for a variety of investors, offering ready access to liquidity and key features such as intraday liquidity and same day settlement. The requirements of swing pricing will strip money market funds of many of the features that make such funds useful cash management tools for investors. Some of the key operational challenges that are likely to impact these features and impede the ability to implement swing pricing in an effective manner are discussed below.

- Estimating Net Redemptions. In order to effectively implement swing pricing, a money market fund must have sufficient investor flow information to allow the fund to reasonably estimate whether it has net redemptions and the amount of net redemptions. The Commission describes this as permitting "reasonable high confidence estimates" of investor flows to determine whether a money market fund has net redemptions.[47] While money market funds receive flow information throughout the day, our members note that flows may be reported with a delay that would make calculation of the swing factor (and determining whether the fund is in net redemptions) difficult, if not impracticable. It is possible that certain redemption (and subscription) activity may be unknown at time of cutoff, particularly where intermediaries generate a large amount of order volume and fund flow activity.[48] Accordingly, what may appear to be a period of net redemptions may very well turn out to be a period of net subscriptions. This would present serious issues under the Commission's swing pricing proposal that would require swing pricing to be calculated based on sufficient investor flow information to reasonably estimate whether the fund has net redemptions for a particular pricing period. As further discussed below, these issues are compounded for money market funds with multiple net asset value strikes per day.

  It is likely that money market funds would be forced to move their cut off times to earlier in the day in order to ensure receipt of sufficient investor flow information in order to make swing pricing decisions prior to striking its net asset value. Moving cut off times to earlier in the day restricts investors' access to liquidity by limiting the time periods during which investors can submit redemption requests and have their orders processed that day. This significantly detracts from the utility of the money market fund wrapper and the functions for which investors use money market funds, and will deprive investors of a useful tool for managing their cash investments. Moreover, we understand that moving or adding order cut off times, including testing related to such changes, can be an intensive and costly undertaking for which it may be difficult to secure funding.

- Same-Day Settlement. Many money market fund investors (particularly, institutional investors) use same-day settlement to move money in and out of their accounts intraday for a variety of time-sensitive business and personal transactions. This is considered a critical feature of money

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[47] Proposing Release *supra* note 3, at note 161.

[48] For a discussion of operational impediments with respect to obtaining timely and reasonably accurate daily fund flow information and how the use of intermediaries complicates the use of swing pricing, *see* Investment Company Institute, "Evaluating Swing Pricing: Operational Considerations," (November 2016) (2016 ICI Swing Pricing Paper), *available at* www.ici.org/pdf/ppr_16_evaluating_swing_pricing.pdf.

market funds for such investors. Same-day settlement transactions are those where the order (either buy or sell) is sent to the money market fund and the money settlement, for both purchases and redemptions, also occurs on the same day on which the money is sent for the order. Thus, the entire settlement process is completed on the same day. Same-day settlement transactions are subject to operational timing issues and imposing a swing pricing requirement would significantly impair a money market fund's ability to provide same day liquidity. Specifically, a money market fund would have to (i) determine whether it has net redemptions for the pricing period, (ii) determine the amount of net redemptions for the pricing period, (iii) calculate a swing factor, which may include market impacts depending upon the level of net redemptions for the pricing period, (iv) apply the swing factor to the fund's net asset value, and (v) process shareholder transactions. This would all have to be completed in time to submit Fedwire instructions by the Fedwire deadline. As a result, to be able to provide same day settlement, money market funds would have to move their cut off and/or net asset value strike times to significantly earlier in the day. This is a negative outcome for the end investor as it limits an investor's access to same-day liquidity, a core feature of money market funds.

- <u>Multiple Strike Times</u>. Certain money market funds offer multiple net asset value strike times in order to provide investors with intraday liquidity. This feature is highly valued by certain investors, as it provides opportunities throughout the day to access their liquidity and more effectively manage their cash management needs. The Commission's proposal is intended to permit money market funds to continue to offer multiple strike times, but would require such funds to consider swing pricing for each net asset value calculation. Essentially, the fund would have to complete the time intensive process described above multiple times a day. Our members expect many money market funds to cease offering intraday liquidity through multiple strike times due to the onerous requirements associated with swing pricing. This would eliminate investors' ability to use money market funds for intraday liquidity and impede investors' ability to use money market funds for cash management purposes. Moreover, money market funds tend to experience different levels of flows throughout the day, with redemptions generally occurring in the morning and subscriptions in the afternoon. The cyclical nature of fund flows is expected due to investors' use of money market funds for cash management, and further makes money market funds (particularly multiple strike money market funds) incompatible with the goals of swing pricing, as swing pricing would effectively penalize investors redeeming early in the day despite the fact that by the end of the day the fund may likely be in overall net subscriptions, making an anti-dilution mechanism like swing pricing simply inappropriate and unnecessary.

  Moreover, the Commission states that based on analysis of historical daily redemptions out of institutional prime and institutional tax-exempt money market funds between December 2016 and October 2021, approximately 5% of trading days may involve net redemptions that exceed the proposed market impact threshold. As noted by the Commission, this figure does not fully take into account net redemptions for each pricing period of a multiple net asset value strike money market fund, which would have to consider whether the fund is in net redemptions for each pricing period.[49] Because flows can be heavier during certain portions of the day, it is likely that such funds could exceed the market impact threshold on a more frequent basis than

[49] *See* Proposing Release *supra* note 3, at note 362 ("since multiple [net asset value]-strike a day funds would apply the threshold multiple times a day under the proposal, this analysis may under- or over-estimate how frequently a threshold may be applied").

when simply analyzing historical daily redemptions. This becomes even more likely because the market impact threshold is divided by the number of pricing periods, making the market impact threshold even lower for each pricing period and therefore more likely that the fund will exceed such threshold. Therefore, the Commission's study based on historical daily redemptions likely underestimates the frequency with which money market funds would exceed the market impact threshold, and presents additional negative impacts to multi-strike money market funds in particular. Initial data from members show a need to implement a swing factor approximately 25% of the time for certain multi-strike net asset value funds under the Commission's rule as proposed.

- <u>Estimating Transaction Costs and Market Impacts</u>. As noted by the Commission, many money market fund assets, such as municipal securities, certificates of deposit and commercial paper, are not exchange traded and many such assets do not have an active secondary market. Therefore, estimating transaction costs and market impact factors of each component of a money market fund portfolio may be time consuming and difficult, especially during a time of stress or liquidity freeze (during which a money market fund's manager is focusing resources on effectively managing the fund through the period of market stress). Much of the commercial paper market can be "no bid" during times of market stress given the limited secondary trading available in commercial paper. This means that most of those assets will need to be fair valued. As such, any swing factor will be an estimate based on assumptions, rather than a true market derived estimate of liquidity costs. The Commission's swing pricing proposal introduces needless complexity and uncertainty during a time of market stress, particularly considering the importance of these inputs given they impact the calculation of the fund's net asset value.

  Moreover, SIFMA notes that the proposed weekly liquid asset requirement is 12.5 times the amount of the market impact threshold of 4% of net redemptions (divided by number of pricing periods). It is unlikely a money market fund would deplete that level of internal liquidity and have to access the secondary market. Market impact factors are intended to represent the percentage decline in the value of the security if it were sold, per dollar of the amount of the security that would be sold, under current market conditions. We see no data in the Proposing Release supporting that 4% of net redemptions has historically required money market funds to sell investments in the secondary market to meet redemptions or otherwise indicated liquidity stress on a money market fund. This is increasingly unlikely under any proposal to increase liquidity minimums. In fact, our members highlight that money market funds may expect redemptions of over 4% for various routine, foreseen events, such as tax filings, which in no way indicate a liquidity issue with a fund. Because such redemptions are typically known and occur in normal market conditions, money market funds meet such redemptions with available liquidity rather than having to sell investments during stressed market conditions.[50] Taken together, this makes the market impact threshold inappropriate.

- <u>Impact on Sweep Arrangements</u>. Cash sweep programs are those in which customer cash balances are automatically "swept" into investments in shares of money market funds (usually through a broker-dealer or other intermediary). Sweep accounts are useful for a variety of reasons, including so investors earn a return that would not otherwise be achieved if cash

[50] As noted above, money market funds employ "know your customer" procedures in order to consider investor characteristics and their likely redemption behavior, and effectively manage redemptions. *See supra* note 41.

balances were kept in a low-interest bank account. Certain intermediaries have the capacity and ability to use floating net asset value funds in sweep programs. Requiring money market funds to implement swing pricing will likely detract from the usefulness of money market funds as a sweep vehicle, potentially making money market funds subject to swing pricing unviable for this purpose.

- Tax and Accounting Implications. From a federal income tax perspective, swing pricing potentially increases reporting requirements from which money market funds (including brokers reporting on money market funds) are currently exempt and raises questions about whether floating net asset value money market funds subject to swing pricing will continue to be exempt from the wash sale rule for redemptions of shares in money market funds.[51]

  Under current regulations, shareholders of floating net asset value money market funds are permitted to use the "net asset value method" of accounting to report gains and losses by aggregating gains and losses for the calendar year on their tax returns, rather than reporting individual transactions. If swing pricing subjects money market funds and brokers to the reporting regime with respect to a shareholder's basis in the securities and/or reporting on the gain or loss of a redemption or sale of the securities, not only would the money market funds and brokers be required to put mechanisms in place to be able to track shareholder basis, holding period, and gain and loss, but shareholders would also have additional information to report and track, including basis. If the proposed swing pricing requirement modifies the method of accounting for gains or losses in money market fund shares, or has other tax implications, the tax reporting effects of the proposed swing pricing requirement could increase burdens for investors, money market funds, and brokers. In addition, the Treasury Department and Internal Revenue Service previously clarified that the wash sale rules do not apply to redemptions in floating net asset value money market funds.[52]

  SIFMA encourages the Commission to continue discussions with the staff of the Treasury Department and Internal Revenue Service regarding the tax consequences of the proposed swing pricing requirement, including implications for an investor's use of the net asset value method of accounting for gain or loss on shares in a floating net asset value money market fund or the exemption from the wash sale rule for redemptions of shares in money market funds, and confirm that shareholders of a floating net asset value money market fund that is subject to swing pricing may continue to use the net asset value method to report gains and losses and confirm that the wash sale rule does not apply to redemptions in floating net asset value money market funds using swing pricing. Any additional tax burdens on investors and money market funds should be considered and resolved by the Commission *prior* to adopting any swing pricing requirement for money market funds.

- Implementation and Ongoing Operational and Other Costs. Swing pricing is likely to result in extensive costs to sponsors and other downstream service providers in order to build the infrastructure needed to support swing pricing. In addition, the ongoing operations to support swing pricing are also likely to be extensive and costly. Further, in considering costs, our

[51] Generally, the wash sale rule prevents taxpayers from taking an immediate loss from the sale of securities if substantially identical securities are purchased within six months of the sale.
[52] *See* Rev. Proc. 2014–45 (2014–34 IRB 388) and Method of Accounting for Gains and Losses on Shares in Money Market Funds; Broker Returns With Respect to Sales of Shares in Money Market Funds, RIN 1545-BM04 (June 15, 2016).

members consider not only the direct costs likely to be incurred to comply with the Proposed Rule, but more importantly the costs to shareholders. Under the Proposed Rule, shareholders would lose key features of the money market fund wrapper that would ultimately result in limiting access to liquidity, as well as potentially fewer investment options for investors. As noted above, all these costs will be incurred despite the proposed swing pricing regime being unlikely to meaningfully impact a money market fund's net asset value or achieve its goals. SIFMA encourages the Commission to carefully consider these costs, particularly in light of the reasons why SIFMA believes implementing swing pricing will be ineffective. SIFMA notes the high costs incurred by funds, sponsors, and service providers in building capabilities to impose liquidity fees and redemption gates (and resulting decrease in the size of the prime and tax-exempt money market fund sectors), only for such measures to ultimately fail to achieve their intended goals. SIFMA encourages the Commission to carefully evaluate the costs of this proposal, including its impact on shareholders and the short-term funding markets, in light of significant questions about whether this proposal will achieve its intended goals.

The other operational and implementation challenges generally applicable to other open-end mutual funds related to swing pricing are also applicable to money market funds. As noted in the Report of the President's Working Group on Financial Markets dated December 2020 ("**PWG Report**"), eligible U.S. mutual funds have yet to implement swing pricing largely because implementation would require substantial reconfiguration of current distribution and order-processing practices.[53] Money market funds provide no exception to these challenges and, as noted above, present many additional and complex challenges.[54]

Our members urge the Commission to consider and avoid these severe negative consequences that ultimately serve to restrict investors' access to liquidity and reduce the core functions of the money market fund wrapper, particularly in light of the discussion above regarding the proposed swing pricing regime being unlikely to meaningfully impact a money market fund's net asset value, investor redemption behavior, or achieve its anti-dilution goals. Even where the swing factor does not result in a change to the fund's net asset value (which, as discussed above, it is unlikely for a money market fund to have an impactful swing factor given money market fund transaction costs), the fund would nonetheless be required to go through the intensive swing pricing process each day in order to calculate its net asset value and dedicate time, money, and resources to such determinations. Swing pricing also introduces a level of unnecessary complexity to the money market fund wrapper that may be difficult for investors to understand, particularly given the fundamental incompatibility of swing pricing for a cash management product. This is an end result that the Commission should seek to avoid.

iv. Swing Pricing Will Reduce the Size of the Prime and Tax-Exempt Money Market Fund Sectors

As more fully discussed under "The Important Role of Money Market Funds in the Short-Term Funding Markets," reforms that significantly alter the structure of prime or tax-exempt money

[53] Request for Comment on Potential Money Market Fund Reform Measures in President's Working Group Report, Investment Company Act Release 34188 at 30 (Feb. 4, 2021), *available at* https://www.sec.gov/rules/other/2021/ic-34188.pdf.
[54] *See, e.g.,* Investment Company Institute, "Evaluating Swing Pricing: Operational Considerations," (November 2016) (2016 ICI Swing Pricing Paper), *available at* www.ici.org/pdf/ppr_16_evaluating_swing_pricing.pdf.

market funds, or make prime or tax-exempt money market funds an unviable option for sponsors, will result in significant harm to the overall functioning of the short-term funding markets. More specifically, reforms that further reduce the size of the prime or tax-exempt money market fund sectors will significantly impair available financing to businesses, corporations, financial institutions, hospitals, universities, and state and local governments, and will limit the amount and types of products available to meet investors' investment and liquidity needs. Due to the incompatibility of swing pricing in a cash management vehicle, along with the operational challenges discussed above, it is foreseeable that swing pricing will make institutional prime and institutional tax-exempt money market funds unattractive to investors, thereby resulting in potentially significant outflows and a reduction in the size of the prime and tax-exempt money market fund sectors. This, in turn, will result in a reduction in capital market funding to the private sector and cause swing pricing to fail in the long term to improve the functioning of short-term funding markets.

The Proposing Release notes, but does not explore, the likelihood that swing pricing would cause reduced demand for issuers of commercial paper.[55] Although money market funds hold less than a quarter of commercial paper outstanding, that is still a substantial segment of the market, and it is likely to have an adverse impact on capital formation by those issuers. The Commission has a unique obligation to consider the effect of a rule change upon "efficiency, competition, and capital formation,"[56] and the Commission's failure to apprise itself of the economic consequences of a rule proposal makes promulgation of the rule arbitrary and capricious and not in accordance with law.[57] The mere hypothetical that other investors may absorb some of the newly available supply[58] is apt to be cold comfort to issuers of commercial paper, who will have seen an important segment of their market disappear and will be able to attract other investors only by increasing their interest costs.

In SIFMA AMG's comments on the PWG Report, SIFMA AMG urged the Commission to consider where money from prime and tax-exempt money market funds will go should certain policy measures be adopted and the remaining options for businesses, financial institutions, and state and local governments to find financing to help meet short-term financing needs.[59] For example, we encouraged the Commission to explore whether banks could handle inflows of money that would otherwise have been invested in prime and tax-exempt money market funds.[60] Short-term funds in demand deposit accounts increase bank costs and capital requirements, yet banks may be unable to make use of the deposits in appropriate short-term vehicles. Under such circumstances, banks may be expected to refuse additional deposits or to charge a fee for accepting them. Although the Commission correctly acknowledges that the adoption of swing pricing requirements may result in a greater reallocation of capital from prime to government funds, bank deposit accounts, insurance company separate accounts, and other types of liquid vehicles, the Proposing Release does not address the ability

[55] *See* Proposing Release *supra* note 3, at 178.
[56] 1940 Act § 2(c).
[57] *Business Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011).
[58] *See* Proposing Release *supra* note 3, at 178.
[59] *See* Letter from Lindsey Keljo, Managing Director and Associate General Counsel, SIFMA AMG (Apr. 12, 2021), *available at* https://www.sec.gov/comments/s7-01-21/s70121-8664048-235345.pdf.
[60] This is especially relevant given the Federal Reserve's announcement that the Federal Reserve will not extend a temporary exemption that impacts the amount of capital banks must keep in reserve. *See* Board of Governors of the Federal Reserve System, "Federal Reserve Board Announces that the Temporary Change to its Supplementary Leverage Ratio (SLR) for Bank Holding Companies Will Expire as Scheduled on March 31" (March 19, 2021), *available at* https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210319a.htm. If a bank is in danger of breaching capital requirements, banks may stop taking deposits, which count on their balance sheets as assets.

of banks to handle inflows of money that would otherwise have been invested in prime and tax-exempt money market funds.[61]

As mentioned earlier, investors use certain money market funds as an alternative to bank deposits. Should such funds no longer exist, and banks are unable to accept additional deposits (or penalize some investors for increasing deposits), investor choice for cash management vehicles would be severely curtailed. This also results in increased concentration risk. Policy responses that eliminate or shrink the prime or tax-exempt money market fund market may drive money into other types of cash pools that are less regulated, to markets that are outside U.S. regulatory oversight, or to products that otherwise introduce increased investment risk.[62] This would increase risks to shareholders and to the U.S. financial markets.

v. Proposed Alternatives to Swing Pricing

For the extensive reasons noted above, SIFMA members strongly oppose the Commission's swing pricing proposal. Particularly where the incentives that contributed to increased redemption behavior in March 2020 (the link between liquidity and the ability to implement redemption gates) are removed, **an anti-dilution mechanism is not only unnecessary, but also entirely inappropriate**. Given the extensive issues discussed above related to swing pricing, to the extent the Commission continues to believe, based on data driven findings and analysis, that an additional anti-dilution mechanism is necessary for certain types of money market funds, SIFMA urges the Commission to consider using liquidity fees as such mechanism for public institutional prime and tax-exempt money market funds.[63] A properly defined and calibrated fee (as discussed below) can successfully serve as an effective and preferrable liquidity risk management tool, *to the extent the Commission produces data and findings that support the notion that money market funds experience dilution in a manner that requires an anti-dilution tool.*

We note that other regulatory bodies and organizations have presented an agnostic approach toward anti-dilution measures for money market funds. The Financial Stability Board's final report on Policy Proposals to Enhance Money Market Fund Resilience endorses economically equivalent measures to swing pricing. Specifically, following comments received on its initial consultation report, the Financial Stability Board in its final report concluded that "it is possible to implement policies that are economically equivalent to swing pricing by imposing a cost on redeeming investors, *in the form of liquidity fees* or antidilution levies, rather than by changing the fund's [net asset value], when a fund's same-day outflows exceed a threshold."[64] Continuing, the Financial Stability Board stated that "if swing pricing is particularly difficult to put in place for [money market funds] in a jurisdiction, it may be appropriate for that jurisdiction to adopt such economically equivalent policies as long as they are

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[61] *See* Proposing Release *supra* note 3, at 267.

[62] This concern has been previously recognized by the Commission. *See* 2014 Adopting Release, *supra* note 5, at 74. We note that given the less regulated, and therefore less transparent, nature of other types of cash pools, it is difficult to analyze the amount of money that flowed out of money market funds regulated under Rule 2a-7 and into such products in connection with the implementation of the 2014 amendments to Rule 2a-7. We further note that while government money market funds saw significant inflows in conjunction with outflows from prime money market funds upon implementation of the 2014 amendments to Rule 2a-7, it is difficult to determine whether those flows remained in government money market funds or ultimately went to less regulated products.

[63] *See* Section II.b.ii. "Increased Liquidity Minimums," for a discussion regarding the application of an anti-dilution mechanism on different types of money market funds.

[64] *See* Financial Stability Board, Policy Proposals to Enhance Money Market Fund Resilience – Final Report at 26 (emphasis added) (Oct. 11, 2021), *available at* https://www.fsb.org/wp-content/uploads/P111021-2.pdf.

implemented in a manner that is likely to pass on to redeeming investors the costs they impose on the fund without creating incentives for pre-emptive runs."[65] SIFMA urges the Commission to consider the approach endorsed by the Financial Stability Board that recognizes the effectiveness of liquidity fees in achieving anti-dilution goals, particularly in light of the extensive difficulties and issues noted above related to implementing swing pricing in the United States.

Additionally, in the Securities and Markets Stakeholders Group's ("**SMSG**") response to the European Securities and Markets Authority's ("**ESMA**") consultation on the legislative review of the European Union's Money Market Fund Regulation, the SMSG concluded:

> Regarding the practical implementation, with swing pricing, a fund adjusts the [net asset value] for inflows or outflows to take into account the costs of purchasing or selling assets of the fund. The exact same result of cost allocation between investors is also achieved through anti-dilution levies (ADL), but it is implemented as an adjustment of the entry and exit charges of the fund, outside the [net asset value]. Similarly, also a liquidity fee, on the exit side only, is implemented as an adjustment of the exit charges of the fund, outside the [net asset value]. These options should also be assessed from an operational standpoint. Time to market is essential for investors in [money market funds], as most [money market funds] offer same day liquidity. The more the practical specifications impose a high cost in time, expertise and complexity in calculation and implementation, frequency of use, etc., the higher the risk to generate side effects and make it inoperable.[66]

Following comments received on its consultation report, ESMA suggested mandatory availability of at least one liquidity management tool for all money market funds. ESMA stated that such specific liquidity management tools could be, in particular, anti-dilution levies, liquidity fees, and could also include swing pricing. ESMA did not mandate the use of swing pricing as the only liquidity management tool permitted to be used.[67] Consistent with the SMSG's response to ESMA's consultation, SIFMA agrees the same results of cost allocation can be achieved through a liquidity fee framework as can be achieved through swing pricing, and strongly encourages the Commission to assess such options from an operational standpoint (particularly in light of the extensive operational concerns highlighted above). SIFMA strongly agrees with SMSG's assessment of the importance of same day liquidity. The practical specifications of swing pricing will impose a high cost in time, expertise and complexity in calculation and implementation, which increase the risk that unintended consequences will make swing pricing inoperable.

Liquidity fees offer many advantages as compared to swing pricing. For example, liquidity fees provide greater transparency for redeeming investors of the liquidity costs they are incurring, whereas investors have little insight into the swing factor being applied and when it may be applied. Liquidity fees also provide a mechanism for imposing liquidity costs directly on redeeming investors, without providing a discount to subscribing investors through a downward adjustment of the fund's transaction price. In addition, investors are more familiar with the concept of liquidity fees due to the adoption of

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[65] *See id.*

[66] *See* European Securities and Markets Authority, Final Report – ESMA Opinion on the Review of the Money Market Fund Regulation at Annex III (Feb. 14, 2022) (footnotes omitted). SMSG facilitates ESMA's stakeholder consultation by providing technical advice on ESMA's policies under development. The SMSG is composed of 30 members appointed by ESMA's Board of Supervisors.

[67] *See id* at 19.

reforms in 2014 that imposed liquidity fees for money market funds and also due to provisions that permit open-end mutual funds to charge a redemption fee. Even with changes to the circumstances or manner in which liquidity fees may be implemented, the use of liquidity fees as an anti-dilution mechanism would serve as a continuation of the existing underlying Rule 2a-7 framework with which investors are already familiar. Conversely, although swing pricing is permitted for open-end mutual funds in the United States, mutual funds have yet to adopt swing pricing and investors have less familiarity with the concept of swing pricing as compared to liquidity fees. Adopting a swing pricing regime may therefore lead to investor confusion, which the Commission should seek to avoid, particularly when an equally effective tool is available to be used.

As mentioned above in Section III.a. "Liquidity Fees and Redemption Gates" and in SIFMA AMG's comments on the PWG Report, the events of March 2020 highlighted how the mere potential for the implementation of measures that restrict access to liquidity incentive and increase redemption behavior. Although SIFMA AMG's comments on the PWG report supported delinking liquidity from the imposition of a liquidity fee or redemption gate, our members highlight that redemption gates in particular incentivized increased redemption behavior in March 2020, as implementation of a redemption gate would restrict an investor's access to liquidity entirely. Additionally, based on further feedback from investors, investors more strongly oppose a redemption gate versus a liquidity fee, and had expressed concerns related to the potential high level of a liquidity fee that could be imposed under Rule 2a-7. Accordingly, SIFMA members believe that a properly defined and calibrated liquidity fee, without the possibility of a redemption gate, can successfully serve as an effective and preferrable liquidity risk management tool, to the extent the Commission produces data and findings that support the notion that money market funds experience dilution in a manner that requires an anti-dilution tool.

SIFMA members believe that a properly defined and calibrated fee would (i) provide clarity to investors on when and how it will be imposed, (ii) be linked to something unobservable to investors in order to prevent threshold effects observed in March 2020 where investors monitored a single metric in anticipation of a fee being imposed and preemptively redeemed shares, and (iii) have a maximum value, as an uncapped fee will deter investors. Moreover, to further the Commission's goals of providing an anti-dilution mechanism (and consistent with underlying policies of other provisions of the 1940 Act related to redemption fees), any anti-dilution mechanism (such as a liquidity fee) should be implemented only when redemptions are in fact likely to dilute the remaining shareholders of the fund.[68] In this light, we discuss the following potential alternatives to swing pricing:[69]

Discretionary liquidity fee based upon enumerated factors and auditable policies and procedures. As an alternative liquidity fee framework for consideration by the Commission, the Commission could adopt a framework that includes a discretionary liquidity fee. For example, this framework could require a board of trustees/directors to consider specific enumerated factors that would be listed in Rule 2a-7

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[68] Under Rule 22c-2, an open-end mutual fund may impose a redemption fee where such fee is necessary or appropriate to recoup for the fund the costs it may incur as a result of redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund. *See supra* Section III.d.ii. "Swing Pricing is Ineffective, Inappropriate, and Unnecessary for Money Market Funds" for a discussion of how money market funds frequently handle large redemptions and typically know when to expect to such redemptions. As such, money market funds typically let securities mature to meet redemptions and therefore do not incur transaction costs, or incur very minimal transaction costs. Therefore, under normal circumstances, redemptions are unlikely to dilute remaining shareholders of a fund.

[69] Not all members agree with each alternative discussed herein. Members will submit comment letters discussing their individual views on specific liquidity fee alternatives.

pursuant to fund policies and procedures when determining whether to implement a liquidity fee (of up to 1.00%, for example), subject to a determination by the board of trustees/directors (including by a majority of trustees/directors that are not "interested persons" (as defined in the 1940 Act) ("**Independent Trustees**")) that implementing a fee is in the best interest of the fund and fund shareholders and is necessary to prevent material dilution or other unfair results.[70] A discretionary approach, based upon specific auditable procedures, would give fund boards the discretion to evaluate current market conditions and determine a fee (subject to a 1.00% cap) that best approximates the actual cost of liquidity.

The requirement for a board to evaluate the need for liquidity fees not only in accordance with their fiduciary duty and in the best interest of shareholders, but also in accordance with specific mandated procedures can help ensure boards have the information necessary to consider and properly implement timely liquidity fees when and if appropriate. By providing the board with discretion to implement a liquidity fee (based on specified factors, pursuant to policies and procedures), this framework would eliminate threshold effects as currently present in Rule 2a-7 by linking liquidity fees to a decrease below the minimum level of weekly liquid assets required by Rule 2a-7. Providing the board with the authority to implement a liquidity fee recognizes that each money market fund is different and, as has been recognized by the Commission in the past, that a fund's board is best suited, in consultation with the fund's adviser, to determine when and if a fee or gate is in the best interests of the fund.[71]

Mandatory liquidity fee based on a dual trigger. As an alternative liquidity fee framework, the Commission could adopt a framework that includes a mandatory liquidity fee. For example, this framework could use a dual trigger approach, with the first trigger based on net redemptions and the second trigger based on a decline in liquidity (at a level substantially below the required weekly liquid asset minimum at which a money market fund could be reasonably likely to have to sell securities to meet redemptions versus meet redemptions with available liquidity). Under this approach, a properly calibrated fee would have the following three main components:

1. Defined triggers. This would be linked to a metric that is opaque or unobservable to investors to prevent the unintended consequences experienced in March 2020 created by threshold effects where investors monitored a single metric in anticipation of a liquidity fee or redemption gate potentially being imposed and preemptively redeemed shares.[72] For example, this framework could employ a dual prong trigger, with the first trigger based on net redemptions and the second trigger based on a decline in liquidity. Under this dual prong approach, a liquidity fee would be required to be implemented if a money market fund had in excess of a specified percentage of net redemptions and liquidity below a specified level. Our members feel that one metric in isolation (redemptions or liquidity) is not necessarily indicative of stress. If the dual pronged test

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[70] For example, these factors could include items such as: (a) current and expected market conditions; (b) current market-based net asset value per share calculation; (c) capital stock activity (gross and net purchases and redemptions); (d) review of shareholder information relative to expected purchases and redemptions ("know your customer"); (e) daily and weekly liquid asset levels; (f) information about current credit quality of portfolio holdings; (g) credit spreads and liquidity conditions prevailing in relevant markets, including estimated transaction costs; (h) results of recent stress testing required under Rule 2a-7; and (i) the availability and costs of alternative liquidity sources.

[71] *See* 2014 Adopting Release, *supra* note 5 at 89-90.

[72] For a further discussion on the unintended consequences of liquidity fees and redemption gates and related threshold effects experienced in March 2020, *see supra* Section III.a. Liquidity Fees and Redemption Gates.

is triggered, however, this more clearly represents a potential stress scenario for which an anti-dilution mechanism could be necessary and appropriate, and reduces the likelihood of a singular trigger producing a false positive.

a. *First trigger: net redemptions*. Although there are times when money market funds may experience redemptions due to routine flow activity, our members believe certain levels of net redemptions can be used to indicate potential stress within a money market fund. Further, this aspect of the trigger (percentage of net redemptions) is opaque to investors and would therefore help to avoid the threshold effects observed in March 2020.

b. *Second trigger: liquidity*. Although there are times where a money market fund may experience a decrease in liquidity that is not indicative of market stress, our members believe that a steep decrease in liquidity can be used to indicate potential market-wide stress or stress within a portfolio. Although this portion of the trigger is an observable metric that is publicly reported on a money market fund's website each day, this would be coupled with an unobservable trigger in order to mitigate any threshold effects.[73]

2. Calibration of the triggers. The triggers should indicate a stress scenario, either macro or idiosyncratic, for money market funds where an anti-dilution mechanism is both necessary and appropriate. As discussed in Section III.d.ii. "Swing Pricing is Ineffective, Inappropriate, and Unnecessary for Money Market Funds," in normal market conditions money market funds typically meet redemptions with maturing securities without having to sell in the secondary market and incur transaction costs to meet redemptions, and therefore a trigger that does not indicate a stress scenario is neither appropriate nor necessary, and will not achieve the Commission's anti-dilution goals. A clearly defined and calibrated trigger will provide clarity to investors on the circumstances under which a liquidity fee would be imposed.

a. *First trigger – 10% net redemptions*. A 10% net redemption threshold represents ½ of the daily liquid asset minimum proposed in this comment letter. The liquidity minimums in Rule 2a-7 are in place for a money market fund to be able to use such assets to pay redeeming shareholders even in stressed market conditions in which funds cannot rely on a secondary or dealer market to provide immediate liquidity. As such, the Commission should be comfortable with money market funds using a portion of their daily or weekly liquid assets to meet redemptions, as intended, and members believe a 10% net redemption threshold represents an appropriate and reasonable portion of a fund's daily liquid assets. Members also examined past redemption behavior of institutional prime and institutional tax-exempt money market funds to arrive at a net redemption threshold that would not be reached on a frequent basis as a result of a routine, known redemptions, but could still serve as a meaningful trigger in connection with a drop in weekly liquid assets. Although members feel that 10% net redemptions can at times be reached in normal market conditions due to routine, expected flow activity, when coupled with a second trigger, our members feel this is an

[73] As discussed above, based on feedback from investors, threshold effects were driven largely by opposition to a redemption gate versus a liquidity fee, along with concerns related to the potential high level of a liquidity fee that could be imposed under Rule 2a-7.

appropriate threshold to use to indicate the potential for stress in a portfolio, particularly when compared to the current swing pricing proposal.[74]

b. *Second trigger – liquidity*. Under the Commission's current proposal, a liquidity threshold event occurs when a money market fund's liquidity has decreased more than 50% below at least one of the proposed minimum daily and weekly liquid asset requirements. While not necessarily indicative of market stress, our members agree that a decrease of 50% of required liquidity can potentially indicate stress in the portfolio.

Our members believe that using a liquidity trigger as part of a dual prong trigger that is tied to a level of liquidity *below* the required minimum provides certain benefits. Specifically, this will allow money market funds to use their liquidity buffers more effectively for their intended purpose because any economic penalties (liquidity fees) will not be tied to an immediate decrease below the minimum level. Accordingly, investors will not be incentivized to preemptively redeem as a money market fund nears a liquidity minimum because no economic penalties are tied to that level of liquidity, which will reduce certain of the threshold effects seen in March 2020. Rather, a money market fund would have to deplete 50% of its required minimum liquidity before a liquidity fee would go into place. This will enable a money market fund to effectively use its buffer to meet redemptions in a manner that may cause the fund to drop slightly below the required minimum at certain times (as intended under Rule 2a-7's "acquisition" test for liquidity, and as part of effective liquidity management of money market funds prior to the adoption of liquidity fees and redemption gates), and then simply rebuild its liquidity buffer in normal course. Put another way, tying the second trigger to a level of liquidity below the required minimum (rather that at the required minimum) simply allows money market funds to operate in their intended design and function.

As discussed in Section III.b.ii. "Increased Liquidity Minimums," SIFMA is recommending daily and weekly liquid asset minimums of 20% and 40% respectively. This would mean a liquidity threshold effect would occur at 10% of daily liquid assets and 20% weekly liquid assets. Our members believe these can be appropriate levels to use as a proxy to indicate the potential for market stress, particularly when used with a second trigger of net redemptions. Currently, Rule 2a-7 imposes a default liquidity fee only after a money market fund's weekly liquid assets have declined to less than 10% of its total assets (unless the fund's board of trustees/directors, including a majority of Independent Trustees), have determined that imposing the liquidity fee is not in the best interests of the fund). In adopting the 10% threshold, the Commission acknowledged that "the threshold for a default liquidity fee should indicate distress in a fund and be a threshold few funds would cross in the ordinary course of business."[75] We agree. We note that the Commission lowered the default liquidity fee threshold from 15% in its initial proposal to 10% in the

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[74] *See supra* Section III.d.ii. "Swing Pricing is Ineffective, Inappropriate, and Unnecessary for Money Market Funds" for a discussion on the reasons the proposed 4% market impact threshold is not an appropriate threshold.
[75] *See* 2014 Adopting Release *supra* note 5, at 84.

final rule, in recognition of the tiered approach that would permit board discretion to impose a liquidity fee if weekly liquid assets dropped below 30% of total assets.[76] We note that this alternative liquidity fee framework represents a substantial increase from current requirements of Rule 2a-7 related to default liquidity fees (10% weekly liquid assets), and even from the Commission's initial liquidity fee proposal (15% weekly liquid assets).

SIFMA further notes that the Commission has previously recognized that 30% weekly liquid assets represents "substantial remaining internal liquidity, thus putting [the money market fund] in better position to bear redemptions without a broader market impact because it can satisfy redemption requests through internally generated cash and not through asset sales (other than perhaps sales of government securities that tend to increase in value and liquidity in times of stress)."[77] Accordingly, should the Commission adopt a liquidity fee framework intended as an anti-dilution mechanism with a dual trigger that includes a weekly liquid asset trigger, such trigger should be below the level of weekly liquid assets at which a fund would be unable to satisfy redemption requests through internally generated cash. Otherwise, such fee is not serving as an anti-dilution mechanism and serving the Commission's goals of reform, as no dilution would be occurring.

Should the Commission believe a level of liquidity higher than 20% of weekly liquid assets is necessary, based on data and analysis, to prevent dilution, then as an alternative to the approach discussed above, the Commission could adopt a tiered approach. For example, the liquidity prong of the dual trigger could initially be triggered at 30% weekly liquid assets, with additional thresholds at 20% and 10% weekly liquid assets triggering an increased liquidity fee.

3. Calibration of the fee. Any fee should have a maximum value, as an uncapped fee will deter investors. For example, a fee of 1.00% could be applied to redeeming investors if the dual trigger test discussed above is met. As noted earlier, we understand from members that the high level of the fee under the current framework (up to 2.00%), coupled with uncertainty of what the fee may actually be, was a contributory factor to increased redemptions in March 2020. As such, a lower, static fee of 1.00% that would apply to all money market funds in scope would provide clarity and certainty to investors in order to mitigate cliff effects. Our members generally believe this is sufficient to further the Commission's goals of reform. We note that a 1.00% fee is consistent with the current default liquidity fee provisions of Rule 2a-7, except that under the current version of Rule 2a-7 the board has discretion to impose a higher fee of up to 2.00%. As previously noted by the Commission, a 2% fee may be higher than most liquidity costs experienced when selling money market securities in a crisis, and may thus result in a penalty for redeeming shareholders over and above paying for the costs of their liquidity.[78]

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[76] *See id* at 85.
[77] *See id* at 89. Further, the Commission has acknowledged that redemptions when the fund still has 30% internal liquidity would not lead to fire sales or other such adverse effects. *See id.* at 61.
[78] *See id.* at 96.

> As an alternative to this approach, the Commission could adopt a tiered approach. For example, a smaller fee (e.g., 0.25%) could be imposed if the fund's weekly liquid assets drop below 30%. An increased fee (e.g., 1.00%) could be imposed if a fund's weekly liquid assets drop below 20%, and a further increased fee (e.g., 2.00%) could be imposed if a fund's weekly liquid assets drop below 10%. A tiered approach would impose incremental costs on redeeming investors before the money market fund is experiencing severe stress. Using a tiered approach also could help mitigate any "cliff risk" associated with using a weekly liquid asset level as it would reassure investors that only a small fee would be assessed in the highest tier.

While SIFMA recognizes there are different methods that could be used in adopting an effective liquidity fee framework, we assert that a properly calibrated fee (such as the options discussed above) can successfully serve as an effective and preferrable liquidity risk management tool, to the extent the Commission produces data and findings that support the notion that money market funds experience dilution in a manner that requires an anti-dilution tool.

Further, as noted above, sponsors spent significant resources building capabilities to address the Commission's liquidity fee requirements. Less than six years after this significant expenditure, this requirement was proven ineffective and is now proposed to be removed from Rule 2a-7. While SIFMA supports the removal of liquidity fees and redemption gates from Rule 2a-7, to the extent the Commission determines it is necessary to provide money market funds with an anti-dilution mechanism, SIFMA urges consideration of permitting money market funds to use liquidity fees as such mechanism, particularly given the resources already deployed to enable compliance with liquidity fee requirements. While strongly opposed to swing pricing requirements for money market funds for the extensive and significant reasons discussed herein, should the Commission determine to adopt swing pricing for certain types of money market funds (based on data driven findings), we have included several modifications to the Commission's swing pricing proposal in Appendix A. Although we are including these modifications for consideration in light of the Commission's specific requests for comment in the Proposing Release, **our members strongly believe that any mitigating adjustments to the Commission's swing pricing proposal will be ineffective in offsetting the negative consequences of swing pricing, as requiring money market funds to implement swing pricing requirements will significantly reduce, if not entirely eliminate, the usefulness of money market funds as a cash management vehicle to investors**.

vi. Scope of Types of Money Market Funds Included in Anti-Dilution Policy Measures

To the extent the Commission adopts swing pricing requirements (or other anti-dilution measures), SIFMA supports excluding retail and government money market funds from the swing pricing requirement. The Commission correctly identifies that retail money market funds historically have had smaller outflows than institutional funds during times of market stress, including during March 2020. Retail investors historically have behaved differently from institutional investors in a crisis, being less likely to make large redemptions quickly in response.[79] As evidenced in March 2020 through increased inflows into government money market funds, investors typically view government money market funds as a relatively safe investment during times of market turmoil. Further, retail prime money market funds did not sell significantly more long-term portfolio securities (i.e., securities

[79] For a further discussion, see *supra* Section III.b.ii. "Increased Liquidity Minimums" and notes 27-30.

that mature in more than a month) in March 2020 relative to their typical averages.[80] These reasons support the exclusion of government and retail money market funds from any anti-dilution mechanism, should the Commission adopt such a measure.

Moreover, investors in a stable net asset value money market fund (such as retail or government money market fund) tend to be even more sensitive to price volatility than investor in a floating net asset value money market fund. Swing pricing would introduce volatility into otherwise stable vehicles intended for principal preservation and effectively convert such funds into a type of floating net asset value money market fund insofar as investors would be unable to predict whether they will be transacting at a stable $1.00 per share price on any given day. Introducing swing pricing for government and retail money market funds would have the effect of significantly reducing the government and retail money market fund sectors, which would have detrimental effects to the larger short-term funding markets. As a result, SIFMA supports retail and government money market funds being excluded from swing pricing requirements, should such requirements be adopted.

Further, SIFMA urges the Commission to exempt non-public money market funds from swing pricing or any anti-dilution measures. Non-public money market funds refer to those funds that are not offered to the public such as "central" funds that asset managers use for internal cash management. Anti-dilution measures for such funds are even further unnecessary and inappropriate given the nature and predictability of flows of related investors in such funds. Non-public institutional prime money market funds experienced outflows representing approximately 6% of assets (approximately $17 billion) during the period March 9 to March 20.[81] SIFMA agrees with the finding in the PWG Report that the outflows experienced by non-public institutional prime money market funds show that such funds "do not demonstrate the same vulnerabilities as funds that are offered publicly to a broad range of unaffiliated institutional investors."[82] Similar to retail money market funds, privately offered institutional prime money market funds did not sell significantly more long-term portfolio securities (i.e., securities that mature in more than a month) in March 2020 relative to their typical averages.[83] Policy measures should be tailored to reflect the difference in investor redemption behavior of the different types of money market funds.

We note that the Proposing Release does not explicitly address the impact of the Commission's proposed rule on money market funds operating under Rule 12d1-1.[84] Our members express concern regarding the proposed rule's effect on unregistered money market funds that choose to operate under certain provisions of Rule 12d1-1under the 1940 Act. To be eligible to rely on Rule 12d1-1, an unregistered money market fund is required to (i) limit its investments to those in which a money market fund may invest under Rule 2a-7, and (ii) undertake to comply with all other provisions of Rule 2a-7. Therefore, unless otherwise exempted, unregistered money market funds that operate under Rule 12d1-1 would need to comply with any proposed amendments to Rule 2a-7 should the Commission adopt such amendments, such as swing pricing. Unregistered money market funds that conform their

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[80] *See* Proposing Release *supra* note 3, at 24.
[81] *See* PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, OVERVIEW OF RECENT EVENTS AND POTENTIAL REFORM OPTIONS FOR MONEY MARKET FUNDS 14 (2020), *available at* https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf.
[82] *Id.*
[83] *See* Proposing Release *supra* note 3, at 24.
[84] Rule 12d1-1 permits investment companies ("acquiring investment companies") to acquire shares of registered money market funds in the same or in a different fund group in excess of the limitations set forth in section 12(d)(1) of the 1940 Act.

operations to the requirements of Rule 12d1-1 should not be required to comply with swing pricing requirements or other anti-dilution measures, should the Commission adopt such proposals. The ability to invest in unregistered money market funds is a valuable tool for investment companies, because such unregistered money market funds are designed to accommodate the daily inflows and outflows of cash of the acquiring investment company. Swing pricing would reduce the attractiveness of unregistered money market funds and possibly eliminate the unregistered fund as a cash management tool for an acquiring investment company. Further, many of the reasons that the Commission seeks to impose an anti-dilution mechanism on certain money market funds are inapplicable or less applicable to unregistered money market funds relying on Rule 12d1-1 as unregistered money market do not present the type of risks that the Commission's swing pricing amendments are designed to reduce. For these reasons, such funds should be excluded from any anti-dilution mechanisms adopted by the Commission.

e. Financial Intermediary Capacity to Redeem and Sell Stable Value Money Market Fund Shares at Prices That Do Not Correspond to a Stable Price Per Share

SIFMA does not support requiring government and retail money market funds to determine that financial intermediaries that submit orders to a money market fund have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to Rule 22c-1 of the 1940 Act (prices that do not correspond to a stable price per share), or, if such determination cannot be made, prohibiting the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund.[85] SIFMA appreciates the Commission's desire to ensure that all parties involved in fund transactions can process transactions at a price of other than $1.00 per share; however, we do not believe the proposed amendments are necessary, particularly given the fact that negative interest rates have never been used in the United States, and are concerned that the proposal would require cost prohibitive changes to a myriad of systems that may cause intermediaries to no longer offer government and retail money market funds to their customers. Further, SIFMA urges the Commission to focus on those types of money market funds that experienced increased redemptions in March 2020 rather than propose amendments that may threaten the functioning of a segment of the money market industry that investors have sought as a safe haven in times of stress.

In 2010, the Commission amended Rule 2a-7 to require that funds (or their transfer agents) have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to Rule 22c-1 of the 1940 Act (prices that do not correspond to a stable price per share). In connection with adopting such requirement in 2010, comments on the proposed rule raised the issue of whether the new requirement would apply to third-party intermediaries (i.e., whether it requires third parties to have the capacity to process transactions in a money market fund at prices other than the fund's stable net asset value). In this regard, the Commission noted that intermediaries themselves typically have separate obligations to investors with regard to the distribution of proceeds received in connection with investments made or assets held on behalf of those

[85] Rule 22c-1 of the 1940 Act provides that no registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

investors.[86] In the Proposing Release, the Commission states its belief that it is necessary that all parties concerned—stable net asset value money market funds, their service providers, and their distribution network—are capable of processing transactions in a fund's shares in the event that the fund converts to a floating net asset value.[87] The Commission is proposing this requirement in connection with proposed amendments to Rule 2a-7 that relate to a money market fund's ability to respond to negative interest rates, as more fully discussed below.

While we appreciate the Commission's desire to ensure that all parties involved in money market fund transactions can process transactions at a price of other than $1.00 per share if the need should arise, we highlight that negative interest rates (which, under the Commission's proposal, would effectively require money market funds to convert to a floating net asset value) have never in fact been used in the United States. Moreover, as more fully discussed below, SIFMA urges the Commission to adopt regulations that would provide stable value money market funds with tools to respond to a negative interest rate environment in a manner that would permit them to continue to transact at a stable price per share. We are concerned that the Commission's proposal would require costly changes to a myriad of systems for an event that has never in fact occurred in the United States. Our members believe it would be inappropriate to adopt sweeping regulatory reforms that would impose significant costs on the industry to protect against an event that has never occurred in the United States, and is currently unlikely to occur in the near term. Rather, our members encourage the Commission to take the time to continue dialogue with the industry and carefully study appropriate responses to negative interest rates, particularly given the potential negative impact regulatory changes could have on the government and retail money market fund sectors.

Service providers and intermediaries have developed complex systems that allow them to communicate and process large volumes of money market fund transactions on a daily basis through a variety of mechanisms on behalf of investors. These systems that are used by certain financial intermediaries can differ between floating net asset value money market funds versus stable value money market funds, as such funds can be housed on different platforms. While funds and intermediaries are familiar with the operational requirements related to money market funds with a floating net asset value, the processing of transactions and operations of these different types of funds tend to be separate for certain intermediaries and we understand that significant infrastructure overhauls would be necessary in order for stable value money market funds to be able to make the determinations related to certain financial intermediaries required under the proposed amendments to Rule 2a-7. For example, based on feedback from members, for certain intermediaries to migrate non-sweep money market funds (or "ticketed money market funds") to different infrastructures, and to automate such process, in order to certify for an event (negative interest rates) that may never happen would cost millions of dollars. Furthermore, to the extent interest rates do turn negative in the future (an event unlikely at the present time), such infrastructure may have been required to be updated and replaced several times over before ever being used.

As noted above, Rule 2a-7 currently requires funds (or their transfer agents) to have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to Rule 22c-1 of the 1940 Act (prices that do not correspond to a stable price per

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[86] *See* Rule 15c3-3(e)(3) under the Securities Exchange Act (requiring broker-dealers to periodically re-compute the value of bank accounts held on behalf of broker-dealer customers); Rule 15c3-2 under the Securities Exchange Act (prohibiting a broker-dealer from using proceeds from free credit balances unless the proceeds are payable on demand of the customer).
[87] Proposing Release *supra* note 3, at 111.

share).[88] The process to redeem and sell securities issued by the fund at a price based on the current net asset value per share is further complicated for intermediaries whose systems tend to be more complex than mutual fund transfer agent systems, as intermediaries' systems are designed to handle a variety of different types of securities. Shareholder communications, including, for example, statements and tax reporting, tend to be more complex for intermediaries as they incorporate non-mutual fund investments and their required disclosures. There are also considerable downstream impacts as a result of the Commission's proposed requirement, including related to cost basis reporting platforms, tax accounting platforms, and margin calculations. All of these factors, including today's restrictive economic environment due to the prolonged period of low interest rates, would prove challenging to intermediaries when considering whether they can justify making the necessary changes in order to continue to support money market funds as a core offering to their customers. The proposed requirement would create a strong incentive for certain intermediaries to use other types of vehicles or accounts rather than money market funds for their clients' cash management needs.

Further, we note that while Rule 2a-7 permits government and retail money market funds to use the amortized cost method of valuation (subject to the conditions of Rule 2a-7), it does not require such funds to do so. If a government or retail money market fund determined to convert to a floating net asset value, as certain money market funds have successfully done in the past, the fund would coordinate with financial intermediaries to implement the conversion to a floating net asset value at such time. Our members believe this current process is appropriate and that requiring funds to make specific determinations with respect to financial intermediaries as proposed by the Commission is neither necessary nor appropriate.

As of March 30, 2022, government and retail money market fund assets totaled approximately $4.35 trillion.[89] The Commission's proposal risks significantly decreasing the size of the government and retail money market fund sectors. As noted earlier under "The Important Role of Money Market Funds in the Short-Term Funding Markets," government money market funds provide the bulk of their funding to the federal government and tax-exempt retail money market funds provide significant funding to state and local governments to help meet short-term financing needs, such as temporary financing as well as funding for public works such as roads, bridges, hospitals, and low-income housing. Decreases in the size of the government and retail money market fund sectors would likely cause the cost of this financing and related projects to increase and be less efficient, thereby negatively impacting governments and municipalities. This results in negative effects on the availability of wholesale funding liquidity and capital formation, and the larger short-term funding markets.

For these reasons, SIFMA does not support the proposed amendments that would require government and retail money market funds to determine that financial intermediaries that submit orders to a money market fund have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to Rule 22c-1 of the 1940 Act (prices that do not correspond to a stable price per share), or, if such determination cannot be made, to prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund. SIFMA believes the currently regulatory framework that relies on intermediaries' separate obligations to investors with regard to the distribution of proceeds received in connection with investments made or assets held on behalf of those investors is the more appropriate means to

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[88] 17 C.F.R. § 270.2a-7(g)(11) (2021).
[89] Investment Company Institute, Money Market Fund Assets (Mar. 31, 2022), *available at* https://www.ici.org/research/stats/mmf.

address financial intermediaries' ability to transact in securities issued by the fund rather than interpose the fund in determinations related to financial intermediary processing of shareholder transactions. SIFMA remains concerned that the proposal would require cost prohibitive changes to a myriad of systems that may cause certain intermediaries to no longer offer government and retail money market funds to their customers, which would cause a decrease in the size of the government and retail money market fund sectors and negatively impact the functioning of the short-term funding markets. Given the important role of money market funds in the short-term funding markets, particularly given the size of the government money market fund sector, SIFMA urges the Commission to carefully consider the impact and consequences of policy measures that may reduce the size of this important sector.

f. Responses to a Negative Interest Rate Environment for Stable Value Money Market Funds

SIFMA members generally do not support prohibiting a money market fund from reducing the number of its shares outstanding to seek to maintain a stable net asset value per share or stable price per share, including using RDM or similar mechanisms in a negative interest rate environment to maintain a stable price per share. Prohibiting a money market fund from reducing the number of its shares outstanding to seek to maintain a stable share price as a solution in a negative interest rate environment restricts investor choice for stable value money market funds, negatively impacts sweep programs, and may reduce the size of the government and retail money market fund sectors in such a manner that will compromise the important role such funds play in the provision of wholesale funding liquidity.

Negative interest rates pose unique challenges for stable value money market funds. As the Commission recognizes, if interest rates turn negative and the gross yield of a money market fund's portfolio turns negative, it would be challenging or impossible for the fund to maintain a non-negative stable share price. Although negative interest rates have never been used as a monetary tool in the United States, in response to the market stresses experienced in March 2020 there was renewed discussions about the potential for negative interest rates in the United States that caused money market fund sponsors to again consider potential options to respond to negative interest rates should they occur.

Drawing on experience from other jurisdictions that used negative interest rates as a monetary tool, sponsors explored solutions that included options that would reduce or cancel full and fractional stable value money market fund shares on a pro rata basis to offset the negative yield and enable the fund to maintain a constant net asset value, including options such as RDM. RDM distributes a stable net asset value money market fund's negative yield by cancelling shares in shareholder accounts. It offsets the daily negative yield accrued (i.e., a decline in the money market fund's net assets) by reducing the number of fund shares outstanding. This process, in turn, allows the money market fund to maintain a constant net asset value per share. The money market fund would then allocate the reduction in shares outstanding pro rata across all eligible shareholder accounts by posting a share redemption/cancellation transaction to each shareholder's account based on the daily negative yield factor per share.

As a baseline matter, our members highlight that RDM has been used with success in other jurisdictions such as Europe. RDM has since been deemed to be inconsistent with European Money Market Funds Regulation and is no longer used in Europe; however, when used, RDM was used as an effective tool in a negative interest rate environment.[90]

RDM, in essence, would continue to offer shareholders the important feature of transacting at a stable price per share and would instead offset negative yield through a reduction in the shareholder's aggregate number of shares held (versus through such negative yield being reflected in the fund's price per share, as would be the case with a fund that floats it net asset value). The Commission's proposal, however, would add a provision to Rule 2a-7 to prohibit a money market fund from reducing the number of its shares outstanding to seek to maintain a stable net asset value per share or stable price per share.

While the Commission does not propose amendments to the pricing provisions of Rule 2a-7, the Commission interprets the existing pricing provisions so that if negative interest rates turn a stable net asset value fund's gross yield negative, the board may reasonably believe the stable share price does not fairly reflect the market-based price per share, as the fund would be unable to generate sufficient income to support a stable share price. Under these circumstances, the money market fund would not be permitted to use amortized cost and/or penny-rounding accounting methods to seek to maintain a stable share price. Instead, the money market fund would need to convert to a floating share price.[91] The Commission further states their belief that, if interest rates turn negative, the board of a stable net asset value money market fund could reasonably require the fund to convert to a floating share price to prevent material dilution or other unfair results to investors or current shareholders.[92] Members question this interpretation, as the Commission has previously acknowledged the use of a reverse stock split in order to increase or stabilize a stable value money market fund's price per share.[93]

The Commission's proposal, if adopted, would essentially leave stable value money market funds with no tools to respond to a negative interest rate environment other than conversion to a floating net asset value money market fund. This is problematic for a variety of reasons.

First, government money market funds are a safe haven for investors and reforms that change the structure of the money market fund product, as this proposal will do, have the potential to eliminate the value that such funds provide to investors, particularly in times of stress. In March 2020, government money market funds saw large inflows of over $830 billion as government money market funds became a vehicle of choice to help preserve liquidity during the liquidity crisis.[94] This reinforces

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[90] *See* Letter from Olivier Guersent, European Commission Director-General of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union, to Steven Maijoor, Chair of the Management Board of the European Securities and Markets Authority (Jan. 19, 2018), *available at* http://firds.esma.europa.eu/webst/20180119_Reply%20to%20Mr%20Maijoor%20on%20MMF.pdf; Letter from Valdis Dombrovskis, European Commission Vice-President Responsible for the Euro and Social Dialogue, to Mr. Maijoor (Oct. 4, 2018), *available at* https://www.esma.europa.eu/sites/default/files/library/ref._ares20185093685_letter_from_ec_to_esma_on_implementation_of_mmf_regulation.pdf.

[91] *See* Proposing Release, *supra* note 3, at 110.

[92] *See id.*

[93] *See* Securities and Exchange Commission, Division of Investment Management, 2014 Money Market Fund Reform Frequently Asked Questions (revised February 17, 2021), Question No. 11, *available at* https://www.sec.gov/investment/2014-money-market-fund-reform-faq.

[94] *See* ICI COVID-19 REPORT, *supra* note 14, at 12.

the high regard that all types of investors have for government money market fund products and their attraction as a safe haven in times of uncertainty. The Commission's proposal risks causing massive redemptions out of stable value money market funds in a negative interest rate environment. Should the United States use negative interest rates as a monetary tool and stable value money market funds are no longer able to maintain a stable price per share and instead must float their net asset value, it is likely that investors will redeem out of such money market funds and seek other options for their cash management needs. The proposal risks effectively removing a vehicle of choice sought by investors in times of uncertainty, and risks causing money to move into unregulated or less regulated products. As explained above, decreases in the size of the government and retail money market fund sectors would likely cause the cost of financing for governments and municipalities and their related projects to increase and be less efficient. This results in negative effects on the availability of wholesale funding liquidity and capital formation, and the larger short-term funding markets.

Second, members have indicated that certain investors prefer the option to invest in a money market fund that transacts at a stable net asset value that uses RDM in a negative interest rate environment, versus a floating net asset value money market fund. Operationally, stable value money market funds that use RDM (as opposed to floating net asset value money market funds) may be preferrable and easier for clients, particularly corporate treasury and sweep clients.[95] Should the Commission adopt its proposal that would prohibit RDM, the Commission is removing and eliminating a preferred investment option for investors rather than respecting investor choice. The Commission has previously recognized the importance of maintaining investor choice and offering investors money market fund options that transact at a stable price per share. The Commission has recognized how funds' stable share price facilitates their role as a cash management vehicle, provides tax and administrative convenience to both money market funds and their shareholders, and enhances money market funds' attractiveness as an investment option.[96] SIFMA reminds the Commission of these prior position and urges the Commission to permit government and retail money market funds to use tools such as RDM to maintain a stable price per share in a negative interest rate environment.

Third, registered investment companies, including money market funds, have fundamental investment policies that are changeable only if authorized by a shareholder vote. While certain of these policies are mandated by the 1940 Act (for example, policies related to diversification), the 1940 Act also permits registered investment companies to set additional fundamental investment policies outside of those specifically required under the 1940 Act.[97] It is possible that money market funds have adopted fundamental investment policies related to maintaining a stable $1.00 price per share or policies that are otherwise at odds with converting to a floating net asset value.[98] The Commission's proposal, if adopted, would contradict such fundamental investment policies that cannot be changed without shareholder approval. The Commission, in essence, would be adopting a requirement for which certain money market funds simply could not comply as a matter of federal securities law

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[95] The impact on sweep vehicles is more fully discussed later in this section.
[96] *See* 2014 Adopting Release at 5, 205.
[97] Section 8 of the 1940 Act (requiring a recital in a fund's registration statement of all investment policies of the registrant, not enumerated in Section 8(b)(1), which are changeable only if authorized by shareholder vote). *See also* Item 16(c)(1) of Form N-1A (requiring disclosure of any policy that the fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives).
[98] Members have not yet reviewed each individual fund's fundamental investment restrictions in connection with this proposal, but note that as part of analyzing compliance with the reforms adopted in 2014 related to floating net asset values, funds reviewed their fundamental investment policies and charter documents to determine how to best structure their fund line up in order to comply with the 2014 amendments.

(absent the costly process of proxying shareholders, with no guarantee of actually obtaining the requisite shareholder vote to approve the proposal).

Fourth, stable value net asset value money market funds are frequently used in sweep programs. While some intermediaries have the capacity and ability to use floating net asset value funds in sweep programs, this is not true for all intermediaries and all sweep programs. Reforms that restrict the ability of government and retail money market funds to transact at a stable price per share in a negative interest rate environment will negatively impact the use of such funds in sweep programs. Sweep vehicles can more easily handle erosion of principal through reduction of shares than through losses caused by a reduction in net asset value due to a floating net asset value. Our members expect that if such funds converted to a floating net asset value, such funds generally would no longer be used as sweep options.

The Commission expresses concerns that investors may be misled or confused by RDM and assume that their investment in a fund with a stable share price is holding its value while, in fact, the investment is losing value over time. Our members believe investors understand a decline in the number of stable value shares (i.e., RDM) as they understand a decline in share prices (i.e., floating share price). Our members also believe RDM can be implemented in a manner that is clear to investors and does not mislead or confuse investors, including retail investors. For example, the Commission could require funds to provide shareholders with advance notice, in plain English, of the potential for a fund to implement RDM along with an explanation of the effects on RDM on their investments (through registration statement disclosure) and could also require funds to provide shareholders with advance notice, in plain English, of the actual implementation of RDM (through a supplement). The Commission could also require funds to provide clear disclosure on their websites and in marketing materials regarding the potential to implement RDM. Such disclosures could be required to explain that, when interest rates are positive, money market funds earn income and share balance rises due to reinvestment, and when interest rates are negative, money market funds reduce share balances to compensate for negative gross yields. Further, in order to provide shareholders with information on the aggregate value of their shares and to ensure shareholders understand the impact of the negative yield factor, the Commission could require money market funds to post on their website the daily negative yield factor, along with an explanation of the impact on share balances. Moreover, the Commission could provide guidance on recommended best practices related to RDM to ensure RDM is implemented in a consistent manner across the industry.[99] These measures will increase transparency for investors so they are able to understand the impact of RDM on their investment over time.

As noted by Commissioner Peirce, proposing a more principles-based approach that would allow fund managers, and in turn, investors, to decide the best approach to increasing money market fund resilience, such as opting for contractual share reductions, enables the Commission to see what works, and makes the financial system more resilient by diminishing the likelihood that problems at one money market fund would spill over to other funds, which in turn might reduce the urge of those in government to rush in with industry-wide rescues.[100] Rather than prohibit RDM and related mechanisms that enable money market funds to continue to offer shareholders the benefit of transacting at a stable price per share, SIFMA urges the Commission to engage in rulemaking with a

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[99] For an example of RDM considerations and recommended practices, see the Investment Company Institute's paper titled "Reverse Distribution Mechanism and Negative Yields: Considerations and Recommended Practices," *available at* https://www.ici.org/system/files/attachments/20_ppr_rdm_considerations.pdf.

[100] *See* Commissioner Hester M. Peirce, Statement on Money Market Fund Reforms (Dec. 15, 2021), *available at* https://www.sec.gov/news/statement/peirce-statement-money-market-fund-reforms-121521#_ftnref4

focus on disclosure to ensure RDM or other related mechanisms are implemented in a manner that is clear to investors without misleading or confusing investors. This will preserve investor choice while also addressing investor protection concerns, rather than forcing conversion to a floating net asset value money market fund (which may be considered by investors as an unattractive alternative) based on an inaccurate assumption regarding the ability of investors to understand the concept of RDM through clear disclosure. Although negative interest rates have not occurred in the United States, engaging in rulemaking around when and how RDM can be implemented will provide increased certainty to both the industry and investors should negative rates be used in the United States.

g. Form N-MFP Disclosure Changes[101]

The Commission is proposing amendments to reporting requirements on Form N-MFP, including new reporting requirements, changes to improve the accuracy and consistency of currently reported information, and increased frequency of certain data points. With respect to new information, the Commission is proposing to require additional information about the composition and concentration of money market fund shareholders by requiring disclosure of the name and percent of ownership of each person who owns of record or is known by the fund to own beneficially 5% or more of the shares outstanding in the relevant class. Although we note this information is disclosed on an annual basis in a fund's statement of additional information, our members raise concerns that such public monthly disclosure requirements present investor privacy and confidentially concerns, as well as put funds at a competitive disadvantage by having to publicly disclose their shareholder base. Our members also question the utility to investors of knowing specific investor names. Accordingly, SIFMA urges the Commission to remove this proposed requirement, or, alternatively, require disclosure of the number of investors owning 5% or more of the share outstanding of a class of a fund. We believe this would still achieve the Commission goal of more frequent information about shareholder concentration in order to monitor a fund's potential risk of redemptions by an individual or a small group of investors that could significantly affect the fund's liquidity, while also respecting investor privacy and confidentiality concerns.

The Commission also proposes to specify that, for purposes of reporting the money market fund's schedule of portfolio securities, filers must provide required information separately for the initial acquisition of a security and any subsequent acquisitions of the security (i.e., for each lot). Specifically, the Commission is proposing an additional item that would require money market funds to provide the trade date on which the security was acquired and the yield of the security as of that trade date. Our members express concern that public lot level yield reporting could reveal trading strategies.

Further, the Commission proposes to remove the ability for money market funds to aggregate certain required information on Form N-MFP if multiple securities of an issuer are subject to the repurchase agreement in order to provide more complete information about securities subject to a repurchase agreement. Our members highlight that this presents significant additional operational burdens. The Proposing Release notes this is intended to provide more complete information about securities subject to a repurchase agreement, but does not express the benefit to the Commission or investors of providing such information.[102]

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[101] Comments on disclosure changes related to swing pricing are discussed in Section III.b.
[102] Proposing Release *supra* note 3, at 135.

With respect to more frequent data points, the Commission is proposing to amend Form N-MFP to require a money market fund to provide in its monthly report liquidity, net asset value, and flow data for each business day of the month, rather than on a weekly basis. The Commission is also proposing to increase the frequency with which money market funds report certain yield information to require such information to be reported for each business day of the month, rather than as of the end of the reporting period.

Due to the extent of the additional information required to be reported on Form N-MFP, SIFMA recommends the Commission extend the current filing deadline from no later than the fifth business day of each month to no later than the seventh business day of each month. Although some, but not all, of the new information required to be reported on Form N-MFP is currently reported on a money market fund's website, certain information may be housed on different systems or maintained by different groups within the fund complex. To ensure sufficient time to compile the voluminous information required to be reported in the monthly Form N-MFP filing and allow sufficient time for review, verification, and submission, SIFMA recommends extending the filing deadline to at least seven business days from each month end, if not more.

IV. Compliance Dates

The Commission proposes a 12 month compliance period for (i) any money market fund that is not a government money market fund or a retail money market fund to comply with the Commission's proposed swing pricing requirement in Rule 2a-7, if adopted, as well as the swing pricing disclosures applicable to these money market funds in the proposed amendments, if adopted, to Forms N-MFP and N-1A; and (ii) for government and retail money market funds to determine that financial intermediaries have the capacity to redeem and sell at a price based on the current net asset value per share pursuant to Rule 22c-1 or prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund, if adopted. The Commission proposes a six-month compliance period for all other aspects of the proposal, including the disclosure amendments to Forms N-CR and N-MFP (other than related to swing pricing).

Based on feedback from our members, we do not believe that the proposed transition period will give affected money market funds sufficient time to comply with the proposed changes and associated disclosure and reporting requirements. Our members also note the dedication of existing resources in order to comply with other regulatory reforms that apply to or impact registered funds, registered investment advisers, and/or their service providers on a competing deadline, including, among others, the Commission's proposed rules related to shortening the standard settlement cycle for most broker-dealer transactions, cybersecurity, enhanced proxy voting reporting, and amendments to Form PF, and the Commission's adopted rules with upcoming compliance deadlines related to valuation, derivatives risk management, and investment adviser marketing.[103] Due to the extensive

[103] *See e.g.,* Investment Adviser Marketing, Investment Advisers Act Release No. 5653 (Dec. 22, 2020), *available at* https://www.sec.gov/rules/final/2020/ia-5653.pdf; Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020), *available at* https://www.sec.gov/rules/final/2020/ic-34128.pdf; Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2020), *available at* https://www.sec.gov/rules/final/2020/ic-34084.pdf; Shortening the Securities Transaction Settlement Cycle, Securities Exchange Act of 1934 Release No. 94196 (Feb. 9, 2022), *available at* https://www.sec.gov/rules/proposed/2022/34-94196.pdf; Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, Securities Act of 1933 Release No. 11028, Securities Exchange Act of 1934 Release No. 94197, Investment Advisers Act Release No. 5956, Investment Company Act

operational and other challenges, infrastructure overhauls, and considerable resources necessary in order to come into compliance with proposed swing pricing requirements and financial intermediary determinations discussed above, our members propose a minimum compliance period of two years for the proposed swing pricing requirements and financial intermediary determinations, should they be adopted. With respect to the proposed disclosure amendments to Form N-MFP, although members already have much of the information sourced due to current website reporting requirements, extra time and resources will be required in order to automate functions for Form N-MFP reporting due to the volume of the information that is proposed to be reported each month. Due to the time required to build out and update infrastructure to automate such reporting, our members propose a minimum compliance period of 18 months for the revised Form N-MFP reporting, should such proposal be adopted.

SIFMA would further like to highlight the short comment period provided for responses in connection with these proposed reforms to Rule 2a-7 that, if adopted, would fundamentally alter the manner in which certain money market funds operate and have the potential to impact the broader short-term funding markets. We are concerned that meaningful public input into the rulemaking process, a pivotal element of ensuring that the Commission's rules are appropriately tailored and that the Commission is meeting its statutory obligations and tripartite mission, is at risk of being lost when sufficient time is not provided for comments to proposed rulemaking. Sufficient time for meaningful public input into individual proposals, including the Proposed Rule, and the possible interconnectedness of the Commission's proposals is vitally important and ultimately could have a significant impact on savers, investors, capital formation, and economic growth and job creation.[104] We encourage the Commission to continue dialogue on the Proposed Rule with key stakeholders to ensure the Commission is receiving meaningful input.

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Release No. 34497 (Feb. 9, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11028.pdf; Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26, 2022), *available at* https://www.sec.gov/rules/proposed/2022/ia-5950.pdf; Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Securities Exchange Act of 1934 Release No. 93169, Investment Company Act Release No. 34389 (Sept. 29, 2021), *available at* https://www.sec.gov/rules/proposed/2021/34-93169.pdf. Our members also note competing compliance deadlines with respect to rule proposals and amendments from other regulatory agencies, such as the Commodity Futures Trading Commission and Financial Industry Regulatory Authority.

[104] For a further discussion of comment periods related to Commission rulemaking, *see* Letter from Alternative Credit Council; Alternative Investment Management Association; American Bankers Association; American Council of Life Insurers; American Investment Council; Bank Policy Institute; Bond Dealers of America; FIA Principal Traders Group; Financial Services Forum; Institute of International Bankers; Institute for Portfolio Alternatives; Investment Adviser Association; Investment Company Institute; Loan Syndications and Trading Association; Managed Funds Association; National Association of Corporate Treasurers; National Association of Investment Companies; National Venture Capital Association; Real Estate Roundtable; Risk Management Association; SIFMA; SIFMA AMG; Security Traders Association; Small Business Investor Alliance; and U.S. Chamber of Commerce; and Center for Capital Markets to Commission Chair Honorable Gary Gensler (Apr. 5, 2022), *available at* https://www.sifma.org/wp-content/uploads/2022/02/SEC_Joint-Trades_Comment-Period-Letter_4-5-2022.pdf.

SIFMA sincerely appreciates the opportunity to comment and your consideration of these views. We stand ready to provide any additional information or assistance that the Commission might find useful. In particular, we and our members would welcome the opportunity to work with the Commission and other industry representatives to address future policy measures for money market funds. Please do not hesitate to contact either Lindsey Keljo at (202) 962-7312 or lkeljo@sifma.org, or Robert Toomey at (212)-313-1124 or rtoomey@sifma.org with any questions.

Respectfully submitted,

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Cc: The Honorable Gary Gensler
The Honorable Allison Herren Lee
The Honorable Caroline A. Crenshaw
The Honorable Hester M Peirce
William Birdthistle, Director, Division of Investment Management

Appendix A

While strongly opposed to swing pricing requirements for money market funds, should the Commission determine to adopt swing pricing for certain types of money market funds, we have included several modifications to the Commission's swing pricing proposal. Although we are including these modifications for consideration in light of the Commission's specific requests for comment in the Proposing Release, **our members strongly believe that any mitigating adjustments to the Commission's swing pricing proposal will be ineffective in offsetting the negative consequences of swing pricing, as requiring money market funds to implement swing pricing requirements will significantly reduce, if not entirely eliminate, the usefulness of money market funds as a cash management vehicle to investors**. Particularly where the incentives that contributed to increased redemption behavior in March 2020 (the link between liquidity and the ability to implement redemption gates) are removed, swing pricing is not only unnecessary, but entirely inappropriate.

- Setting an upper limit on a money market fund's swing factor. The Commission included a 2% upper limit on swing factors for open-end mutual funds under Rule 22c-1 out of concerns that without such a limit, a fund's application of swing pricing could operate as a "de facto gate" or place an undue restriction on investors' ability to redeem. The Commission believes the more specific parameters in the Proposing Release for determining a money market fund's swing factor sufficiently mitigate these concerns. SIFMA respectfully disagrees. Without an upper limit, there is less transparency for investors as they will be unsure as to the magnitude of any swing factor, which will likely result in reduced interest in institutional money market funds and a further decrease in the size of the prime and tax-exempt money market fund sectors.[105] Further, by not setting an upper limit, the Commission is increasing the potential for increased volatility in a manner inconsistent with a money market fund's goal of principal preservation and stability. In addition, estimating a market impact for each security in a time of stress presents many challenges. Setting an upper limit can help alleviate certain of these issues to the extent the upper limit could be used in such times of stress.

- Increasing the market impact threshold. To the extent the Commission retains the consideration of market impact factors as part of a money market fund's swing factor, SIFMA urges the Commission to adopt a higher market impact threshold. First, SIFMA notes that the proposed weekly liquid asset requirement is 12.5 times the amount of the market impact threshold of 4% of net redemptions (divided by number of pricing periods). It is unlikely a money market fund would deplete that level of internal liquidity and have to access the secondary market. The Commission notes that to establish the amount of net redemptions that should trigger application of the market impact factor, the Commission reviewed historical flow information for institutional money market funds over a nearly five-year period.[106] While historical flow information is insightful as to the frequency with which money market funds may cross the proposed threshold, we see no reason why this should be the primary basis for determination of the threshold itself. Market impact factors are intended to represent the percentage decline in the value of the security if it were sold, per dollar of the amount of the security that would be sold, under current market conditions. We see no data in the Proposing Release supporting that 4% of net redemptions has historically required money market funds to sell investments in the secondary market to meet redemptions or otherwise indicated liquidity

[105] *See supra* Section II for a discussion of the negative consequences of a reduction in the size of the prime and tax-exempt money market fund sectors.
[106] *See* Proposing Release *supra* note 3, at 51-52.

stress on a money market fund. This is increasingly unlikely under any proposal to increase liquidity minimums. Our members highlight that a money market fund may experience 4% of net redemptions (or smaller amount for multi-strike net asset value funds) for routine reasons in normal market conditions, such as tax filing deadlines. Because money market funds expect such redemptions, they are able to meet redemptions with available liquidity rather than have to sell investments during a time of stress. These types of events would nonetheless trigger the consideration of market impact factors under the Commission's proposal, although such events are far from problematic. Taken together, this makes the market impact threshold inappropriate as currently proposed.

Second, as noted above, money market funds tend to experience different levels of flows throughout the day, with redemptions generally occurring in the morning and subscriptions in the afternoon. The Commission states that based on analysis of historical daily redemptions out of institutional prime and institutional tax-exempt money market funds between December 2016 and October 2021, approximately 5% of trading days may involve net redemptions that exceed the proposed market impact threshold. As noted by the Commission, this figure does not fully take into account net redemptions for each pricing period of a multiple net asset value strike money market fund, which would have to consider whether the fund is in net redemptions for each pricing period.[107] Because flows can be heavier during certain portions of the day, it is likely that such funds could exceed the market impact threshold on a more frequent basis than when simply analyzing historical daily redemptions. This becomes even more likely because the market impact threshold is divided by the number of pricing periods, making the market impact threshold even lower for each pricing period and therefore more likely that the fund will exceed such threshold. Therefore, the Commission's study based on historical daily redemptions likely underestimates the frequency with which money market funds would exceed the market impact threshold. Initial data from members show a need to implement a swing factor approximately 25% of the time for certain multi-strike net asset value funds under the Commission's rule as proposed.

- Safe harbor. Should the Commission adopt swing pricing, the amendments should make clear that (1) a determination that a money market fund had net redemptions or exceeded the "market impact threshold" during a pricing period or (2) application of the swing factor determined in accordance with the method set forth in the policy, in either case made on reasonable inquiry, will not subject the fund, the manager, or any individual involved in the determination to any liability, absent knowing or reckless behavior. Also, consistent with Rule 22c-1, the Commission should make clear that as long as the money market fund followed reasonable practices, policies and procedures in gathering sufficient information in determining whether the fund was in net redemptions for any given pricing period (which may include reasonable estimates), differences (i.e., in actual versus estimated net flows) would not in and of itself result in a determination of a net asset value pricing error requiring reprocessing of transactions or a financial statement adjustment to the fund's net asset value.[108]
Swing pricing determinations necessarily will require the use of judgment in determining swing thresholds and swing factors and the use of estimates in making swing pricing adjustments. The resulting records and reports may be subject to the liability provisions of Section 34(b) of the

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[107] *See* Proposing Release *supra* note 3, at note 362 ("since multiple [net asset value]-strike a day funds would apply the threshold multiple times a day under the proposal, this analysis may under- or over-estimate how frequently a threshold may be applied").
[108] *See* Investment Company Swing Pricing, Inv. Co. Act Release No. 32316 at 110 (Oct. 13, 2016), *available at* https://www.sec.gov/rules/final/2016/33-10234.pdf.

1940 Act, which provides that it shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to section 31(a) of the 1940 Act. Section 34(b) does not require that a violator act willfully, and the Commission has ruled that scienter need not be found to establish a violation. Swing pricing determinations, however, will be prepared quickly with limited information and will be readily subject to second-guessing with the benefit of hindsight. To protect funds and other persons with responsibilities under Section 34(b) against undue risk under this demanding liability statute, we believe that the Commission should affirmatively provide that liability for violations of the 1940 Act and the rules thereunder will not attach for errors in swing pricing calculations unless the error is material and the fund or other person acted knowingly or recklessly.