



October 23, 2008

The Honorable Henry M. Paulson, Jr.
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Secretary:

On behalf of the Coalition of Mutual Fund Investors (CMFI), I am writing to recommend an amendment to the Guarantee Agreement being used in the Treasury Department's Temporary Guarantee Program for Money Market Funds. Under this new program, funds from the Exchange Stabilization Fund will be used to guarantee the share price of money market funds that have a policy of maintaining a stable share price of \$1.00 per share.

CMFI is an Internet-based advocacy organization that represents the interests of individual mutual fund investors. You can obtain more information about the Coalition and its activities on our website at www.investorscoalition.com.

As you know, many money market fund shares are sold through third-party financial intermediaries, such as brokers, fund supermarkets, financial advisors, and retirement plan providers. Typically, these intermediaries consolidate their daily order flow for each money market fund into one "omnibus" order. These intermediaries appear on a money market fund's books as the shareholder of record, representing hundreds or thousands of beneficial owners through an omnibus account.

Omnibus accounts lack transparency at the mutual fund level because the identity of the intermediary's customers and the transactions of these investors are not generally disclosed to the compliance personnel at the fund. A number of the market timing abuses that were uncovered over the past five years were found to have occurred in these opaque omnibus accounts.

To remedy this problem and improve the transparency within these accounts, the Securities and Exchange Commission (SEC) promulgated Rule 22c-2. This Rule became effective in October 2007, and it requires mutual funds, including money market funds, to have written agreements with all of their financial intermediaries, in order to facilitate

information sharing at the individual investor level.¹ Rule 22c-2 requires an intermediary to provide shareholder identification and transaction information for any or all of its customers at the request of a fund.²

While the intention of Rule 22c-2 was to improve information sharing within these accounts—to combat market timing and other abusive short-term trading practices—the Rule does not restrict either the frequency of or the purpose for requesting this information. CMFI believes that Rule 22c-2 should be used to improve the guaranteed payment process for any money market fund which faces a liquidation event.

The current Guarantee Agreement does not contain adequate protections for individual investors who purchased money market shares through an intermediary. Payments are only made to “shareholders of record,” which means that investors transacting through an intermediary must rely on that intermediary to disburse their guaranteed payment. The investment adviser and the fund itself only have to use “best efforts” to ensure that beneficial owners receive their payments. Here is what Section 7(k) of the Guarantee Agreement states:

The Investment Company and the Investment Adviser of the Affected Fund shall use their best efforts to assure that any Designated Shareholder that is not the beneficial owner of the Designated Shares promptly disburses the Designated Shareholder Payment to the beneficial owner or owners of the Designated Shares. Upon the request of the Treasury, the Investment Company shall provide the Treasury and the SEC with a written plan that describes the actions it will take to provide greater assurance that the Designated Shareholder Payment will be paid to the beneficial owner of the Designated Shares.³

In section 9(j) of the Guarantee Agreement, the Treasury reserves the right to ask the SEC to arrange for its personnel to inspect the books and records of any liquidating fund to help provide for an orderly liquidation and a proper disbursement of the Designated Shareholder Amounts.⁴

In order to protect the interests of individual investors, the Treasury Department should consider using Rule 22c-2 to provide transparency within third-party omnibus

¹ Mutual Fund Redemption Fees, 70 Fed. Reg. 13,328 (Mar. 18, 2005); Mutual Fund Redemption Fees, 71 Fed. Reg. 11,351 (Mar. 7, 2006); Mutual Fund Redemption Fees, 71 Fed. Reg. 58,257 (Oct. 3, 2006).

² CMFI has been supportive of Rule 22c-2 because it offers more transparency at the individual investor level within omnibus accounts. However, the Rule is flawed in that it does not require daily monitoring of customer identities and transaction information, something that can occur in a very cost-effective manner through the back office systems currently operating in the mutual fund industry. You can obtain more information about how to improve Rule 22c-2 by reading CMFI's comment letters to the SEC on the Regulatory Action page of our website: <http://www.investorscoalition.com/regulatory.htm>.

³ Section 7 (k), Guarantee Agreement, U.S. Department of the Treasury, available at: http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf.

⁴ Id. at page 20.

accounts for the purpose of making guaranteed payments after a liquidation event. The information sharing provisions of Rule 22c-2 can be used to “look through” these omnibus accounts on September 19, 2008, and on the Guarantee Event, the day that a fund’s Net Asset Value drops below \$0.995 and the fund is forced to liquidate.

Using Rule 22c-2 in this manner will provide a liquidating fund with the ability to ensure that beneficial owners receive their Designated Shareholder Payments in a manner that is both timely and accurate.

This recommended approach is certainly better for investors than a “best efforts” requirement in the Guarantee Agreement. This is also the preferred option that is currently being used for many distribution payments through the SEC Fair Fund program, where “look through” information is being provided by brokers and other intermediaries, and fund administrators are making disbursements directly to investors, rather than only relying on intermediaries to disburse these payments.⁵ Under this approach, a liquidating fund would have the option to disburse payments directly to beneficial owners. If a fund chose to rely on intermediaries to disburse payments, the information provided from a Rule 22c-2 request will help the fund oversee this payment process and ensure a documented audit trail.

To accomplish this alternative approach, the use of Rule 22c-2 should be mandated in the Guarantee Agreement. This can be achieved by the following amendatory language to Section 7 (k) (new language underlined and deleted language in brackets):

The Investment Company and the Investment Adviser of the Affected Fund shall use Rule 22c-2 [their best efforts] to facilitate the distribution of the Designated Shareholder Payment directly to beneficial owners and to assure that any Designated Shareholder that is not the beneficial owner of the Designated Shares promptly disburse the Designated Shareholder Payment to the beneficial owner or owners of the Designated Shares. Upon the request of the Treasury, the Investment Company shall provide the Treasury and the SEC with a written plan that describes any additional [the] actions it will take to provide greater assurance that the Designated Shareholder Payment will be paid to the beneficial owner of the Designated Shares.

The use of Rule 22c-2 can improve the disbursement process for any fund which faces a liquidation event. Instead of just using “best efforts,” a fund should be able to rely on this Rule to have full transparency within omnibus accounts and ensure that all of its beneficial owners receive the guaranteed payments provided under this Treasury program.

⁵ For more information on the SEC Fair Fund program, see <http://www.sec.gov/divisions/enforce/claims.htm>. You may also learn about the SEC’s program by consulting the material on Distribution Plans located on the CMFI website at www.investorscoalition.com/regulatory.htm.

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Thank you for your consideration of these views. If you or your staff have any additional questions or require additional information, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, looped 'N' and a distinct 'H'.

Niels Holch
Executive Director
(nielsholch@att.net)

cc: The Honorable Christopher Cox
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
Andrew Donahue, SEC Division of Investment Management
Robert Plaze, SEC Division of Investment Management