



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

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November 5, 2012

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

The U.S. Chamber of Commerce (the “Chamber”) is the world’s largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region. The Chamber supports a modern and effective regulatory structure that promotes capital formation in a 21st century economy. Accordingly, the Chamber is concerned by your request that the Financial Stability Oversight Council (“FSOC” or “the Council”) use its authority, under Section 120 of the Dodd-Frank Act, to recommend changes to the Securities and Exchange Commission’s (“SEC”) regulatory regime for money market mutual funds. Such action would create uncertainty, weaken financial regulation, harm investors, and damage the capital formation process needed for businesses to grow and create jobs.

Over the past year, the SEC failed to do any of the necessary work to study the impact of prior money market mutual fund reforms and identify any additional needed changes. Because it failed to define the specific areas in need of further reform, it did not even consider options that would have strengthened rather than destroyed the utility of this product. For example, regulators have not studied how the expanded credit and liquidity requirements adopted in 2010 impact fund resiliency and the risk of runs. The SEC did not recommend approaches or even consider the results of the stress tests it began to require of money market mutual funds as part of the 2010 reforms. And, the SEC did not examine the impact of the proposals it was considering on either systemic risk or the continued viability of money market mutual funds.

The Honorable Timothy Geithner
November 5, 2012
Page 2

The process you recommend in your letter to the FSOC members would only repeat or exacerbate the flawed approach the SEC has taken over the past year. While you indicate in your letter that you believe FSOC should also consider alternative reform options, you also recommend that the Council rush to endorse recommendations without actually considering any alternatives or even reviewing the impact of the proposals you outlined.

The Chamber respectfully requests that you withdraw your request and that the Council refrain from making recommendations, and instead encourage the SEC, an independent regulatory agency, to move forward with a different approach. A majority of Commissioners of the Securities and Exchange Commission have indicated that they are willing to consider options to further strengthen the resiliency of money market mutual funds if such action is justified by a careful examination of the impact of the 2010 reforms to Rule 2a-7.

Doing so will allow the SEC to complete the long-delayed review and engage in a deliberative decision making process—free from FSOC interference, which could undermine that process. As the primary regulator of money market mutual funds, the SEC is the only regulatory body that Congress directed to review any recommendations for money market mutual fund reform that the FSOC members could recommend. The actions that you have asked the Council to take would hinder, not help, the SEC as it weighs the likely impacts of potential changes against these and other public policy goals. Instead of allowing the SEC to complete its deliberative process, if the FSOC were to accede to your request, it would be promoting a rush towards what appears to be a predetermined outcome.

Money market mutual funds play a critical role in the U.S. economy because they provide investors, businesses, and state and municipal governments with the flexibility needed to meet short-term funding obligations and deploy reasonable cash management strategies that support their everyday operations. By playing this critical role in sound financial management, these funds provide the benefits of stability, liquidity and return. No alternatives with the same multiple benefits are available to replace money market mutual funds.

For businesses and state and municipal governments, money market mutual funds also represent a major source of funding. Money market mutual funds own

nearly 40% of commercial paper and more than 60% of the municipal securities outstanding today. This source of financing is vital for businesses to meet their working capital needs and for state and local governments to fund critical infrastructure projects. Any structural changes or restrictions placed on money market mutual funds could decrease funds' demand for commercial paper and municipal securities, thus increasing the cost of issuance and harming investors and taxpayers in the process.

As stated in your September 27th letter to members of FSOC urging the Council to take action on money market mutual funds, “[t]he Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) gives the Council both the responsibility and authority to take action to address risks to financial stability if an agency fails to do so.” Private and public statements by financial regulators appear to confirm that the FSOC is poised to act on money market mutual funds later this month. Such action is inherently premature, irresponsible, and potentially damaging to investors, businesses, state and local governments, and other users of money market mutual funds.

SEC Chairman Mary Schapiro withdrew her proposal to modify the regulation of money market funds because of a lack of support in late August. The Schapiro Proposal was withdrawn because of a fundamental disagreement within the Commission on the appropriate course of action to take, and the necessary basis for taking it, rather than an outright refusal to act. While the Schapiro Proposal was never publicly introduced, a bipartisan group of SEC Commissioners, Troy Paredes, Luis Aguilar, and Dan Gallagher, opposed its introduction at that time and they issued statements individually and jointly that expressed deep concern about proceeding down the regulatory path suggested by the Chairman without first evaluating the impact of the 2010 changes to Rule 2a-7 on investors, issuers, the fund industry, and the economy. These three Commissioners, a bipartisan majority of the independent agency, further stated that a greater understanding of the impact of changes to money market mutual funds to cash management was needed before moving forward with **any** regulatory action.

The Chamber raised these same issues with Chairman Schapiro and the SEC nearly one year ago in a letter dated November 17, 2011 (see: <http://www.sec.gov/comments/4-619/4619-114.pdf>). Between the time the

Chamber letter was submitted and last August, there was no clear evidence that the Commission conducted any analysis to address these concerns. Certainly, no analysis or proposals were provided to the public for comment or input.

Importantly, it should also be noted that none of the dissenting Commissioners rejected the notion that further reforms might be appropriate. In fact, the three dissenting Commissioners suggested that a thorough and comprehensive analysis of these funds, under the current regulatory regime and their role in the cash management industry, needs to be completed in order for the SEC to determine the appropriate course of regulatory action regarding money market mutual funds. The Chamber agrees with this prudent approach and believes that an SEC study and a concept release will help inform the Commission of the central role that these funds play in cash management. Such a course of action will help ensure that the needs of investors, businesses, and state and municipal governments are met, that appropriate protections are put in place if needed, and that any unintended consequences are minimized.

The Chamber understands that the SEC is moving forward with this prudent approach. Reports indicate that the SEC is now embarking on such a study of the 2010 amendments, and after such study is completed, the SEC will decide what action, if any, to take regarding the regulation of money market mutual funds. Only at that time, with a full understanding of the SEC's analysis and proposed course of action, should the Council consider using Section 120 of the Dodd-Frank Act, on an issue that is four square in the SEC's jurisdiction.

Furthermore, the facts belie your assertion that FSOC action is needed in this area. Money market mutual funds are investment products and not a substitute for government-guaranteed bank deposits. This is a fact that is not lost on investors in money market mutual funds. A recent survey of investors by one fund family indicated that 90% of investors knew that their fund investment was not guaranteed. As investment products, the regulation of these funds should remain with the SEC, which is the agency that has subject matter expertise. As the agency mandated with protecting investors, maintaining orderly markets and promoting capital formation, the SEC has over 70 years of experience regulating the fund industry. It was the SEC that, after careful study, fashioned the regulatory structure for the money market mutual fund industry that is in place today and has proven so successful, when

considered both in isolation and in comparison to regulatory regimes for other financial products and institutions.

The FSOC, by using its Section 120 powers under the Dodd-Frank Act, may be endangering rather than promoting the safety and soundness of the financial markets. First, prematurely invoking Section 120 under the guise of systemic risk regulation can and will work at cross-purposes with the SEC's mandate to promote capital formation. Second, subjecting money market mutual funds to what amounts to joint oversight by the FSOC, which is over-populated with bank regulators and unduly influenced by that regulatory perspective, and the SEC will blur the distinction between an investment product and traditional bank deposit products. This is not simply a matter of investor confusion; FSOC oversight of money market mutual funds as deposit-like products will necessarily foster a view in the marketplace that there is an implied guarantee of these funds. By doing this, FSOC action may blunt market discipline and increase the potential for a run on these funds.

The FSOC should only consider incurring these risks and proposing changes to the regulatory regime for money market mutual funds, with a full understanding of the SEC's analysis and proposed course of action, and after following the requisite regulatory procedures itself. First, like the SEC, the Council should conduct comprehensive analysis of the 2010 reforms to Rule 2a-7 to understand their impact, so that FSOC can identify and clearly define the problem it is seeking to solve. Second, it should develop only those reform options that address the problems identified. Finally, in compliance with the requirements of Section 120 and Executive Order 13563 issued by President Obama, the Council should conduct a thorough cost benefit analysis of the options it plans to propose. Such analysis should include an evaluation of the proposal's impact on cash management and short-term financing for businesses, state and local governments, investors, and other users of money market mutual funds. In addition, the Council should consider the cumulative impact of its proposal and other rulemakings completed or underway by its member agencies, such as the Volcker Rule, Basel III capital rules, and the various new regulations for derivatives – all of which will limit corporate treasurers' ability to get needed capital and manage risk.

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The Honorable Timothy Geithner
November 5, 2012
Page 6

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In short, the Council's mad dash to a predetermined outcome not only could jeopardize an important intermediary for investors and state and corporate finances, but it could also unnecessarily compromise the integrity of our regulatory system. We urge you to take these risks into account before hastily interjecting the Council in the money market mutual fund regulatory process. We would be happy to further discuss our concerns with you and your staff.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann

cc: The Honorable Mary Schapiro, Securities and Exchange Commission
The Honorable Elisse Walter, Securities and Exchange Commission
The Honorable Troy Paredes, Securities and Exchange Commission
The Honorable Luis Aguilar, Securities and Exchange Commission
The Honorable Daniel Gallagher, Securities and Exchange Commission
The Honorable Ben Bernanke, Federal Reserve Board
The Honorable Martin Gruenberg, Federal Deposit Insurance Corporation
The Honorable Gary Gensler, Commodities Futures Trading Commission
The Honorable Debbie Matz, Credit Union National Administration
The Honorable Edward DeMarco, Federal Housing Finance Agency
Mr. John Walsh, Office of the Comptroller of the Currency
The Honorable Roy Woodall, Financial Stability Oversight Council
Mr. Richard Cordray, Consumer Protection Financial Bureau