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U.S. Money Market Funds and the European Sovereign Debt Crisis

Introduction

The financial press recently reported that the U.S. Securities and Exchange Commission ("SEC") will be proposing in the coming weeks new restrictions on U.S. money market funds ("money funds"), including capital requirements and a "liquidity fee" that would hold back a portion of a client's account for 30 days in the event of a redemption.[1] Explaining the need for such proposals, SEC Chairman Mary Schapiro was quoted as saying that "Money market funds remain susceptible to runs and to a sudden deterioration in quality of holdings, and we need to move forward with some concrete ideas for proposals to address these structural risks."[2] These proposals will be in addition to the extensive reform of money fund regulation that occurred in early 2010.

Although the SEC will likely propose new regulations for money funds, the ability of money funds to operate successfully through the European sovereign debt crisis calls into question the need for additional regulatory measures. In June 2011, when news intensified regarding a potential Greek default, regulators and policymakers immediately identified money funds as being prone to risks due to their exposure to European banks that could be impacted by the events in Greece.[3]

1 *See, e.g.*, Andrew Ackerman & Kirsten Grind, *U.S. Sets Money-Market Plan*, WALL ST. J., Feb. 7, 2012.

2 *Id.*

3 *See, e.g.*, Graham Bowley, *In a Greek Default, Higher Risk for Money Market Funds*, N.Y. TIMES, June 28, 2011.

Comparing a Greek default to the Lehman Brothers Holdings Inc. bankruptcy that occurred in the Fall of 2008, some commentators questioned whether prime money funds could be poised for a run, while others offered more dire predictions and suggested that a default by a European bank could cause some funds to "break the buck."[4]

Notwithstanding the ominous forecasts made in the press and by some regulators, to date, money funds have successfully weathered the European sovereign debt crisis. Investment advisers and directors of money funds responded to the crisis by intensifying their oversight of funds, adjusting their funds' exposure to European banks and making information public regarding fund holdings of securities issued by European banks, in order to quell any concerns over the possible impact of the crisis on the funds.

This *DechertOnPoint* examines how the rules governing money funds, as amended in 2010, operated to protect funds throughout the crisis and reviews the actions that fund boards and management have taken over the past eight months to further strengthen the funds. It also offers suggestions as to areas on which boards and management may wish to focus if conditions continue to deteriorate in Europe.

4 *See, e.g.*, Mary Pilon & Jon Hilsenrath, *Unease Rises Over Funds*, WALL ST. J., June 22, 2011.

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Overview of Money Funds and Regulatory Structure

Unlike other funds registered under the Investment Company Act of 1940, as amended (the "1940 Act"), a money fund seeks to maintain a stable net asset value ("NAV") of $1.00 per share by complying with Rule 2a-7 under the 1940 Act.[5] Under Rule 2a-7, a money fund must comply with operational and procedural requirements in order to maintain a stable NAV. If a money fund is unable to meet these requirements, the fund would be forced to value its shares at a market-based NAV, which could result in the fund "breaking the buck." Rule 2a-7 and related rules governing money funds impose strict requirements on money funds relating to:

- the oversight of a money fund by its board;
- the portfolio quality, diversification, maturity and liquidity of the money fund (the "Risk-Limiting Provisions"); and
- the disclosure of money fund portfolio holdings.

Board Oversight

Initial Board Findings and Adoption of Procedures

Rule 2a-7 imposes several requirements on a money fund's board. Before a money fund may use the amortized cost method to offer fund shares at a stable $1.00 NAV per share, the fund's board must initially determine in good faith that it is in the best interests of the fund and its shareholders to maintain a stable NAV per share and that the fund will only continue to do so as long as the board believes that the stable NAV per share fairly reflects the fund's market-based NAV.[6]

Boards overseeing money funds also must adopt "procedures reasonably designed, taking into account current market conditions and the fund's investment objectives, to stabilize the fund's NAV per share, as computed for the purpose of distribution, redemption and repurchase, at a single value" ("Procedures").[7] These Procedures must include "shadow pricing" provisions that monitor any deviation between the current NAV per share calculated using available market quotations and the fund's $1.00 amortized cost price per share ("Deviation"). The extent of the Deviation must be calculated at such intervals as the board determines appropriate and reasonable in light of current market conditions, with many funds calculating the extent of the Deviation on a daily basis. Boards are required to periodically review the amount of any such Deviation, with such review typically occurring on at least a quarterly basis.

Although Rule 2a-7 requires mandatory board consideration when a money fund's Deviation is ½ of 1% ($0.005), most boards have built a lower tolerance level into their funds' Procedures, requiring that prompt notice be given to the board if the Deviation exceeds a reduced threshold, such as ¼ of 1% ($0.0025).

To date, the board oversight process, combined with enhanced scrutiny and diligence by fund management, appears to have enabled money funds to manage their credit exposure to European banks and avoid any impact on the ability of funds to maintain a $1.00 share price. As the European crisis continues to unfold, however, money fund boards and management should remain vigilant to possible risks arising out of the crisis. In the case of fund management, steps that might be taken include continuing or further enhancing the review and monitoring of banks and other issuers whose debt is held in the money fund's portfolio. This would assist management to anticipate and, where necessary, mitigate, the impact that further deterioration of the situation in Europe might have on the creditworthiness of those issuers and the market for their securities. In the case of boards, directors should review carefully the reports and other information they receive regarding money funds, asking questions as necessary in order to satisfy themselves that fund management is taking reasonable steps to protect the funds and their shareholders.

Stress Testing

The SEC added stress testing requirements to Rule 2a-7 as part of the February 2010 amendments to the Rule

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5 Virtually all U.S. money market funds use the amortized cost method of valuation to maintain a stable NAV per share. Rule 2a-7(a)(2) defines the amortized cost method as the "method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors."

6 Rule 2a-7(c)(1).

7 Rule 2a-7(c)(8)(i).

(the "2010 Amendments").[8] These stress testing provisions require the board of a money fund to provide for periodic testing of the fund's ability to maintain a stable NAV per share upon the occurrence of certain hypothetical events.[9] The Rule requires that a money fund conduct a stress test with respect to hypothetical events that include, but are not limited to: (i) changes in short-term interest rates; (ii) an increase in shareholder redemptions; (iii) a downgrade of or default on portfolio securities; and (iv) the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and those on commercial paper and other types of securities held by the fund.[10] The 2010 Adopting Release stated that money funds also should incorporate into their stress testing procedures "know your customer" evaluations ("KYC Evaluations"), pursuant to which a fund should evaluate the liquidity needs of its shareholder base.[11]

The results of a money fund's stress tests must be reported to the board at the next regularly scheduled meeting (or sooner, if appropriate in light of the results). The report must detail the testing that was performed and state the magnitude of each hypothetical event that would cause the Deviation to exceed ½ of 1%. In addition, the fund's investment adviser must provide the board with its assessment of the fund's ability to withstand the events (and simultaneous occurrences of those events) that are reasonably likely to occur within the following year.

Stress testing and the reporting of the results to a money fund's board has focused the attention of both management and fund directors on potential risks to the fund coming from possible market events, including the European crisis. As events continue to unfold, fund management should monitor a money fund's exposure to European banks and other issuers that may be adversely affected by the crisis and consider stress testing the impact of a possible default or widening of credit spreads arising out of the crisis, on the fund's ability to maintain a stable price per share. Management may also wish to consider whether any modifications to a money fund's stress testing procedures are advisable under the circumstances. Boards should review the stress testing reports they receive and discuss with management the steps that are being taken to monitor the impact that European events could have on the fund.

With respect to the KYC Evaluation requirement, fund management and boards should consider the nature and concentration of a fund's shareholder base to determine whether an event in Europe could trigger significant redemptions of money fund shares. Heavy redemptions could require the money fund to liquidate portfolio positions at an inopportune time, which could cause the realization of losses on portfolio positions. If fund management concludes that redemptions are likely to be significantly heavier than usual, the money fund's liquidity position, as well as any existing line of credit, should be reviewed to make sure that the fund would be able to meet such redemption requests.[12] A board should discuss these possibilities with management and satisfy itself that appropriate steps are being taken to protect the fund.

Finally, in light of the requirement that a money fund's investment adviser must provide the board with an assessment of the fund's ability to withstand events that are reasonably likely to occur within the following year, a board should discuss with management the scenarios the investment adviser has considered and the types of events that management believes are reasonably likely to occur within the upcoming year.

Oversight of Money Fund Registration Statements

As with boards of other funds, money fund boards are responsible for statements made in the fund's registration statement. Given the heightened scrutiny of money funds throughout the European sovereign debt crisis, money fund boards may wish to have management confirm that the fund's principal investment strategies and risks have been accurately disclosed to investors.

8 Money Market Fund Reform, Investment Company Act Release No. 29, 132, 75 Fed. Reg. 10,060 (Feb. 23, 2010) (hereinafter the "2010 Adopting Release").

9 Rule 2a-7(c)(10)(v).

10 Rule 2a-7(c)(10)(v)(A).

11 KYC Evaluations also are discussed later in this *DechertOnPoint*.

12 In addition to the specific daily and weekly liquidity requirements of Rule 2a-7, the Rule requires a fund to hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under Section 22(e) of the 1940 Act and any commitments the fund has made to shareholders. Rule 2a-7(c)(4)(iv)(5).

Risk-Limiting Provisions

Money funds are subject to strict provisions governing the quality of fund portfolio holdings. In addition, Rule 2a-7 requires money funds to maintain a high level of portfolio diversification and liquidity. In combination with stringent maturity requirements for portfolio securities, these Risk-Limiting Provisions serve to protect money funds from risky investments and create a regulatory framework designed to stabilize funds in periods of market turmoil.

Denomination of Portfolio Investments

Rule 2a-7 limits the portfolio holdings of money funds to securities that are denominated in U.S. dollars. For a security to qualify as U.S. dollar-denominated under Rule 2a-7, all principal and interest payments must be payable to the holder in U.S. dollars under all circumstances. This requirement essentially removes any potential for a change in the value of a non-U.S. currency to directly affect the ability of a money fund to maintain a $1.00 share price. Recognizing this restriction, non-U.S. issuers, such as European banks, seeking capital from U.S. money funds, issue U.S. dollar-denominated securities that qualify under Rule 2a-7. Therefore, while a money fund may be directly exposed to the credit risk of a European bank, the fund is not directly exposed to currency risk of the euro depreciating against the dollar.

Minimal Credit Risks

Rule 2a-7 further restricts money funds to investments in portfolio securities that present minimal credit risks, as determined by the fund's board. [13] Under Rule 2a-7, boards can delegate this responsibility to the fund's investment adviser and, as a matter of practice, virtually all boards do so. In making a determination of minimal credit risk, the adviser cannot rely solely on the credit ratings status of a fund's portfolio securities, but must assess a number of factors related to the overall credit quality of the issuer of each portfolio security. [14] This assessment must be made initially for every security held by the fund, and should be monitored and updated in response to market events. These requirements reduce the possibility that money funds will be exposed to the undue credit risks of European banks or other issuers. If an issuer experiences significant credit problems, money funds would be prohibited from purchasing securities of the issuer and may be forced to divest of any securities of the issuer that are held by the fund. [15]

Credit Quality

In addition to being restricted to investing in securities that are denominated in U.S. dollars and present minimal credit risks, money funds may only acquire "Eligible Securities." [16] To be deemed an Eligible Security, a security must have a maturity of 397 calendar days or less and be rated in the two highest short-term ratings categories (or deemed to be of comparable quality) by Nationally Recognized Statistical Rating Organizations ("NRSROs"). [17] Moreover, money funds are subject to additional limitations on investments in securities that are rated in the second-highest rating category. While these "Second Tier Securities" are Eligible Securities, money funds may not acquire any Second Tier Securities that have remaining maturities of greater than 45 days. [18] Furthermore, a money fund is prohibited from investing more than 3% of its total assets in Second Tier Securities, or more than 0.5% of its assets in Second Tier Securities of any one issuer. [19] As a result, a money fund's maximum exposure to lower quality securities issued by European banks is quite limited.

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13 Rule 2a-7(c)(3)(i).

14 The SEC staff has highlighted certain factors that should be considered, including: (i) the issuer's market position within its industry; (ii) the strength of the issuer's industry within the larger economy; (iii) financial leverage; (iv) cash flow adequacy; (v) earnings; (vi) issuer liquidity; (vii) quality of issuer management and accounting practices; and (viii) an analysis of the risks related to the security. *See* Investment Company Institute, SEC No-Action Letter (Dec. 6, 1989).

15 Under Rule 2a-7(c)(7)(ii), such divestiture is required if a security no longer presents minimal credit risks, unless the fund's board specifically finds that it is in the best interests of the fund to continue to hold the security.

16 Rule 2a-7(c)(3)(i).

17 Rule 2a-7(a)(12). In addition, there are certain other provisions that permit a security to be deemed an Eligible Security when it is subject to a demand feature or guarantee. *See, e.g.*, 2a-7(a)(12)(iii).

18 Rule 2a-7(c)(3)(ii).

19 *See* Rule 2a-7(c)(4)(i)(C).

Diversification

Money market funds are subject to strict portfolio diversification requirements.[20] Generally, prime funds may not invest more than 5% of their total assets in the securities of a single issuer. As with the Second Tier Security concentration limits described above, the diversification restrictions under Rule 2a-7 further reduce a money fund's exposure to the credit risk of any one issuer.

Maturity

Rule 2a-7 requires a money fund to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable NAV.[21] Money funds are also restricted from acquiring any security that has a remaining maturity of greater than 397 calendar days. In addition to the limitations on individual securities, a money fund must also maintain a dollar-weighted average portfolio maturity ("WAM") of 60 days or less across its entire portfolio, as well as a dollar-weighted average life to maturity ("WAL") of 120 days or less across its entire portfolio.[22]

Liquidity

Under the 2010 Amendments, money funds must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligation to pay redemption proceeds within seven days of receiving a redemption request, as well as any other commitments the fund has made to its shareholders (the "General Liquidity Requirement"). In addition to the KYC Evaluation requirement discussed above, Rule 2a-7 prohibits money funds from investing more than 5% of their total assets in illiquid securities.[23] Furthermore, prime money funds are required to invest at least: (i) 10% of their total assets in "daily liquid assets" (cash, U.S. Treasury securities, and securities convertible into cash within one business day); and (ii) 30% of their total assets in "weekly liquid assets" (cash, U.S. Treasury securities, certain U.S. government securities with remaining maturities of 60 days or less, and securities convertible into cash within five business days). These liquidity requirements have enabled money funds to withstand increases in redemption requests received as a result of the ongoing European sovereign debt crisis.

20 *See* Rule 2a-7(c)(4)(i).

21 Rule 2a-7(c)(2).

22 Generally, the WAM is calculated by determining the period remaining until the date on which the principal amount of a security must be paid, or, in the case of a security that is called for redemption, the date on which the redemption must be made. However, Rule 2a-7 contains several specific exceptions that permit a money fund to shorten the maturity of a security by taking into account the effect of demand features and other maturity shortening devices, such as interest rate reset dates for adjustable-rate securities. Unlike WAM, WAL is measured without reference to these maturity shortening provisions.

Portfolio Holdings Disclosure Provisions

Money funds are required to disclose information about their portfolio holdings each month on their websites and file a monthly electronic report with the SEC of detailed portfolio holdings information on Form N-MFP. These disclosure requirements have provided greater transparency of money funds' portfolio information in a convenient format for investors. These requirements also provide investors with a better understanding of the current risks to which a money fund may be exposed. The data produced by these requirements indicates that money funds generally have reduced their portfolio holdings in Eurozone issuers as the European sovereign debt crisis has developed.

Public Website Posting Requirement

Rule 2a-7 requires a money fund, on a monthly basis, to disclose the fund's schedule of investments and to disclose information with respect to each security held, including: (i) the name of the issuer; (ii) the category of investment; (iii) the principal amount; (iv) the maturity date as determined under Rule 2a-7 for purposes of calculating weighted average maturity; (v) the final maturity date, if different from the maturity date previously described; (vi) the coupon or yield; and (vii) the amortized cost value.[24] In addition, Rule 2a-7 requires a money fund to disclose the overall WAM and WAL of its portfolio securities.[25] Under Rule 2a-7, a

23 Illiquid securities are securities "that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund." Rule 2a-7(a)(19).

24 Rule 2a-7(c)(12)(ii).

25 Rule 2a-7(c)(12)(i).

money fund must post the portfolio information, current as of the last business day of the previous month, no later than the fifth business day of each month and maintain the information on its website for no less than six months after posting. [26]

The monthly public website posting requirement has been helpful in providing investors and the marketplace with timely information regarding a money fund's holdings during the European sovereign debt crisis. Prior to the 2010 Amendments, Rule 2a-7 did not impose a particular posting requirement and money funds had different policies for disclosing portfolio holdings. As a result, investors did not necessarily have ready access to information regarding a money fund's portfolio holdings and, therefore, were less able to determine the extent to which a fund held a particular security. In addition to the monthly public website posting, some money funds have gone further and have voluntarily disclosed details regarding portfolio holdings, including information as to the fund's holdings of European bank securities and/or holdings in particular countries.

Monthly Reporting to the SEC

Rule 30b1-7 under the 1940 Act requires a money fund to report on new Form N-MFP, with respect to each portfolio security held on the last business day of the prior month, detailed information including: (i) the name of the issuer; (ii) the title of the issue, including the coupon or yield; (iii) the category of investment; (iv) the credit ratings given by each NRSRO, and whether each security is first tier, second tier, unrated or no longer eligible; (v) the maturity date, as determined under Rule 2a-7; (vi) the final legal maturity date; (vii) whether the instrument has certain enhancement features; (viii) the principal amount; (ix) the current amortized cost value; (x) the percentage of the money market fund's assets invested in the security; and (xi) whether the security is an illiquid security." [27] Form N-MFP also requires money funds to report to the SEC information about the fund, including information about the fund's risk characteristics, as well as the market-based values of each portfolio security and the fund's market-based net asset value per share. [28] The information contained on Form N-MFP is made available to the public by the SEC 60 days after the end of the month to which the information pertains. [29]

The SEC has used the information required by Form N-MFP to create a central database of money fund portfolio holdings to enhance its oversight of money funds and its ability to respond to market events. The SEC uses the market-based information to assist in its understanding of fund portfolio valuation practices and to monitor money funds and their exposures to market risks.

Analysis of Data on Portfolio Holdings

Based on industry data compiled by the ICI and other organizations, during 2011, money funds significantly reduced their holdings of debt securities issued by banks and other businesses headquartered in the 17 countries that use the euro as their currency. Indeed, portfolio managers of U.S. money funds have effectively eliminated their direct holdings in the countries most affected by the European sovereign debt crisis. Money funds have also trimmed their holdings of issuers in other Eurozone countries that might be negatively affected by the debt crisis. As a result of these portfolio adjustments, U.S. money funds hold virtually no securities issued in Greece, Italy, Spain, or the other Eurozone "periphery" countries.

Securities of all Eurozone issuers accounted for 14.2 percent of total assets of U.S. prime money funds at the end of November 2011, down from 17.4 percent in October and 31.1 percent in May. In addition, money funds' exposure to French-domiciled banks, which were particularly identified as risky, continued to fall sharply throughout the past year. Prime money market funds reduced their holdings of French issuers to 4.1 percent of their assets under management in November, down from 7.3 percent in October and the peak level of 15.7 percent in May 2011. The ICI estimates that, at the end of November 2011, the total exposure of U.S. prime and government money market funds to Eurozone issuers was $305 billion, of which almost half was in short-dated repurchase agreements. [30] Fitch Ratings, in a survey of the 10 largest money funds, found that

26 Rule 2a-7(c)(12).

27 Rule 30b1-7.

28 *See* 2010 Adopting Release.

29 Rule 30b1-7(b).

30 Sean Collins & Chris Plantier, *Money Market Funds Continued to Reduce Eurozone Holdings in November*, Investment Company Inst., Dec. 16, 2011, *available at* http://www.ici.org/viewpoints/view_11_mmfs_holdings_update.

these funds held only 10% of their total assets in Eurozone bank debt at the end of December 2011.[31]

Recently, however, bankers have reported that money funds have begun moving back into European bank short-term paper. According to these reports, some money funds have bought French bank paper with maturities that were as long as one month, as well as small amounts of Spanish bank paper. The reports also indicate that some money funds have bought longer-dated UK, Dutch and Scandinavian bank paper, with maturities of up to six months. These purchases could signal an improvement in the perceived creditworthiness of certain Eurozone issuers, as the European Central Bank attempts to backstop key institutions.[32]

31 Anusha Shrivastava, *U.S. Money Market Funds Cut Euro Zone Bank Debt Holdings*, WALL ST. J., Jan. 25, 2012, *available at* http://online.wsj.com/article/SB10001424052970203806504577183852779192554.html.

32 Telis Demos, *US Funds Return to European Bank Paper*, FIN. TIMES, Jan. 22, 2012, *available at* http://www.ft.com/intl/cms/s/0/83f10e54-43c0-11e1-9f28-00144feab49a.html.

Conclusion

The robust regulatory structure governing money funds and diligent oversight by money fund boards and management have contributed to the resiliency shown by U.S. money funds during the European sovereign debt crisis. Moreover, the existing regulatory framework empowers boards and advisers to exercise additional vigilance against further deterioration of the situation, which could be accomplished through the approaches discussed above. Although the SEC continues to focus on proposing additional reforms to money fund regulation, the success of money funds during the European sovereign debt crisis should lend support to the notion that the 2010 Amendments have adequately strengthened money funds and that further structural changes to money funds, such as a floating NAV, are not necessary for the protection of investors.

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