Fund Democracy
Consumer Federation of America
Consumer Action
AFL-CIO
Financial Planning Association
National Association of Personal Financial Advisors

January 16, 2008

BY EMAIL AND US MAIL

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N. E.
Washington, D.C. 20549-1090

RE: Rulemaking Petition

Dear Secretary Morris:

On behalf of Fund Democracy, the Consumer Federation of America, Consumer Action, AFL-CIO, Financial Planning Association, and National Association of Personal Financial Advisors, we hereby petition the Commission to adopt a rule requiring that money market funds make nonpublic monthly electronic filings of their portfolios to enable the Commission to monitor more closely the funds' risk of loss of principal.

As the Commission is aware, recent market events have caused a number of managers of money market funds to purchase assets from their funds in order to forestall loss of principal (commonly referred to as "breaking a dollar"). The market for structured investment vehicles backed by mortgages has experienced a significant downturn and reduced liquidity. Money market funds are permitted to hold these securities provided that the funds satisfy the maturity, quality and diversification requirements of rule 2a-7 under the Investment Company Act. In some cases, money market funds' holdings of structured investment vehicles have created the risk that the fund's net asset value would break a dollar.[1] To prevent this occurrence, some fund managers, pursuant to rule 17a-9 or SEC no-action letters,[2] have repurchased their funds' securities at par value.

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[1] *See* Shannon Harrington, Money Fund Sponsors May Be Under Most Stress Ever, Moody's Says, Bloomberg (Nov. 19, 2007) (discussing $50 billion exposure to structured investment vehicles of 10 largest U.S. money market fund managers).

[2] *See*, *e.g.*, SEI Liquid Asset Trust – Prime Obligation Fund, SEC No-Act (Dec. 3, 2007) *available at* http://www.sec.gov/divisions/investment/noaction/2007/seiliquidasset120307.pdf. We note that the transactions permitted by these letters do not grant an exemption from applicable provisions under the Investment Company Act, such as the prohibitions against principal and joint transactions with affiliates.

We question the prudence of continuing to rely so heavily on fund managers' willingness to bail out their money market funds when loss of principal is a threat. Managers of money market funds may have regulatory as well economic incentives not to bail out their money market funds in certain situations. For example, banking regulators have occasionally expressed concern regarding the risk that banks and bank affiliates might be deemed to be guarantors of their money market funds, and they have been mollified only by reassurances that ultimately a fund manager would not be legally obligated to bail out its money market fund if regulators considered doing so to be imprudent. Banking regulators' primary concern is the safety and soundness of banks, not the safety and soundness of money market funds. Indeed, money market funds represent a continuing threat to banking regulators' turf, because money market funds for many years have increased their asset base at banks' expense. Unlike funding for the Commission, funding for key federal banking regulators is provided by the industry they regulate, and banking regulators have an incentive to favor banks over other financial services providers. The risk that one day a bank will decline to bail out a money market fund under economic, regulatory and political pressure is real. Banks' losses in the subprime market have only increased that risk.[3]

To our knowledge, no retail fund has broken a dollar, but we believe that it may be inevitable that a fund manager will one day decline to bail out its money market fund. To prepare for this eventuality, the Commission should take steps to ensure that the damage to faith in money market funds is minimized. Money market funds have provided a valuable service to America's financial markets, as attested to by their recent exceeding of $3 trillion in assets. The total assets of money market funds substantially exceeds total bank deposits, a fact made all the more impressive considering that virtually all bank deposits have the advantage of government insurance. As events in England have recently reminded us, even federal deposit insurance provides no guarantee against a bank run.[4] The absence of such insurance for money market funds makes public trust in such funds all the more critical.[5] There have been too many instances in which Rule

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We question whether the routine authorization of transactions that probably violate the federal securities law is an appropriate procedure for addressing this type of problem.

[3] *See* Christian Plumb and Svea Herbst, Bank of America Says Closing Enhanced Cash Fund, Reuters (Dec. 10, 2007) (reporting closing of cash management fund "after it invested in risky assets in the pursuit of higher returns"); Christopher Condon and Rachel Layne, GE Bond Fund Investors Cash Out After Losses From Subprime, Bloomberg (Nov. 15, 2007) (reporting that GEAM Enhanced Cash Trust "returned money to investors at 96 cents on the dollar after losing about $200 million, mostly on mortgage-backed securities."); Craig Karmin, Florida Fund Is Drained of $1.2 Billion, Wall St. J. at C2 (Dec. 7, 2007) (reporting shutdown and reopening of Florida's Local Government Investment Pool, which manages cash accounts for state school districts and local governments").

[4] *See* John Cranage, Big Run on Northern Rock Puts a Dent in Consumer Confidence, Birmingham Post at 17 (Sep. 29, 2007).

[5] *See* Jonathan Burton, Mounting Concern about Money-Market Funds; Investments Seen as Safe and Secure Face Threat from Bad Debt Holdings, MarketWatch.com (Nov. 15, 2007) ("Is your money-market fund safe? Millions of U.S. investors with cash in these mainstream vehicles are asking that question as

2a-7 has failed to prevent imminent loss of principal to continue to rely on private firm bailouts for the protection of the money market franchise.

While the Commission has committed significant resources to ensuring greater oversight of hedge funds' investing activities, the investors in which are sophisticated persons presumed to be able to fend for themselves, we are not aware of the Commission having taken any additional steps to evaluate and enhance the safety and soundness of money market funds, which play an increasingly important role in Americans' financial security and the stability of our financial system. We therefore request that the Commission act promptly to protect money market fund shareholders by requiring that all money market funds make nonpublic monthly electronic filings of their portfolios to enable the Commission to monitor and evaluate the risk of loss of principal on an ongoing basis.

Monthly portfolio disclosure would enable the Commission to monitor both the reasonableness of portfolio pricing and the risk of loss of principal. Electronic filings would permit timely comparisons of prices at which different funds were valuing identical securities. As the Commission is aware, money market portfolio securities generally are not traded in liquid markets with transparent pricing, but pursuant to matrix pricing systems that may vary across different fund managers. Experience shows that fund managers occasionally will deal with losses by manipulating portfolio security prices, which can magnify the amount of the loss if the fund's fortunes worsen. Ongoing monitoring of money market fund portfolios would provide the data necessary to detect and prevent large scale liquidity and pricing problems long before they have systemic effects.

We note that in 1995 the Commission proposed similar requirements for money market funds, but failed to adopt a final rule.[6] Present circumstances have reaffirmed the wisdom of the Commission's earlier proposal, which was intended to enhance its ability "to monitor money fund compliance with the federal securities laws, target its limited on-site examination resources, and respond in the event of a significant market event affecting money funds and their shareholders."[7]

We further recommend that the Commission consider requiring that money market funds provide additional data that would assist the staff in evaluating the fund's

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some leading banks, investment managers and mutual-fund companies take steps to shield money funds from potential losses on troubled debt in their portfolios.").

[6] *See* Money Market Fund Quarterly Reporting, Investment Company Act Rel. No. 21217, at Executive Summary (July 19, 1995) (proposing to require quarterly electronic filing of portfolio information, including: "(i) the name of the security and its issuer and any guarantor of the security; (ii) the security's credit quality; (iii) whether it is illiquid; (iv) its value; (v) the percentage of the portfolio represented by the security and the percentage of the portfolio invested in securities issued by the issuer; (vi) its maturity date; and, in the case of an adjustable rate instrument, (vii) the formula used for adjusting its interest rate."). Under current rules, money market funds are required to disclose their portfolios only quarterly and provide only the information required on Forms N-CSR and N-Q.

[7] *Id*.

risk level. For example, the filings could include the percentage of an issue owned by a fund and its affiliates in order to enable the Commission to evaluate the credibility of trading prices for those securities. When two Heartland Funds were shut down in 2000 because of portfolio mispricing, the problems were partly attributable to the funds' holding large stakes in certain issues. The Commission also could require that the filings show the last trade price and trade volume for each security. The Commission concurrently should continue to promote price transparency and market pricing for securities eligible to be held by money market funds. These disclosure reforms could be implemented in conjunction with the Commission's ongoing XBRL roll-out, which would provide a low-cost, highly functional format for delivery and analysis of money market portfolio data.

The regulation of money market funds is arguably the single greatest success story in the history of financial services regulation. Rule 2a-7 has become a model for private funds and foreign governments who offer interests in cash management vehicles. The Commission has a responsibility to protect this valuable institution by taking steps to minimize the likelihood of a loss of confidence in money market funds resulting from one or more funds breaking a dollar. We strongly encourage the Commission to improve portfolio reporting requirements for money market funds to minimize this risk.

Respectfully submitted,

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Fund Democracy

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cc:

The Honorable Christopher Cox
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