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February 28, 2011

Ananda K. Radhakrishnan Director Division of Clearing & Intermediary Oversight Commodity Futures Trading Commission Three Lafayette Centre 1155 21st Street, NW Washington, DC 20581

Dear Ananda:

Thank you for meeting with us last week. We greatly appreciate the time and attention that you and your colleagues gave us in discussing the Commission's recent rulemakings as to the use of shares of money market mutual funds ("money funds") for investment of swaps collateral and to hold customer cash. We intend to follow up shortly with additional thoughts in this regard. In the meantime, enclosed is a copy of comments we submitted on behalf Federated, to the Financial Stability Oversight Council on supervision and regulation of nonbank financial companies.

We appreciate the Commission's focus on the liquidity of money funds. In this regard, as you consider the proposed new rules, we would like to draw your attention to the SEC's recent amendments to Rule 2a-7 (see enclosed letter at 17-24). In particular, we note that money funds must now be able to redeem shares at a price based on current NAV even if the fund breaks the buck (see enclosed letter at 21). Essentially, this provision requires a money fund to move to a floating NAV, recognize portfolio losses and promptly honor redemption requests at less than a dollar in that event. This new requirement will enhance liquidity at money funds in the context of a money fund "breaking a buck" and address concerns on the ability of futures commission merchants and others to quickly access money invested in a Money Fund in that circumstance.

I hope that the enclosed letter will be helpful to you as you move forward. We appreciate the opportunity to provide you with our thoughts.

Sincerely,

Gary Gensler, Chairman

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February 24, 2011

Submitted By Electronic Transmission Via www.regulations.gov

Financial Stability Oversight Council Attn: Lance Auer Deputy Assistant Secretary Department of the Treasury 1500 Pennsylvania Avenue, NW Washington, D.C. 20220

Re: Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,

12 C.F.R. Part 1310. RIN 4030-AA00

Dear Ladies and Gentlemen:

I. Introduction and Summary of Conclusions

We are writing on behalf of our client, Federated Investors, Inc. and its subsidiaries ("Federated"), to provide comments in response to the Financial Stability Oversight Council's ("Council's") Notice of Proposed Rulemaking Regarding Authority to Require Supervision and ("Council's") Notice of Proposed Rulemaking Regarding Authority to Require Supervision and ("NPR"). Federated has served since Regulation of Certain Nonbank Financial Companies ("NPR"). We appreciate 1974 as an investment adviser to money market mutual funds ("Money Funds"). We appreciate the opportunity to assist the Council as it considers the regulatory framework proposed in the NPR.

¹ See Financial Stability Oversight Council, Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 76 Fed. Reg. 4555, Jan. 26, 2011.

² Federated has more than thirty-five years in the business of managing Money Funds and, during that period, has participated actively in the money market as it has developed over the years. The registration statement for Federated's Money Market Management fund first became effective on January 16, 1974, making it perhaps the longest continuously operating Money Fund to use the Amortized Cost Method. Federated also received one of the initial exemptive orders permitting use of the Amortized Cost Method in 1979.

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The three purposes of the Council under Section 112 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") are: to identify risks to the financial stability of the U.S. that could arise from large interconnected bank holding companies, nonbank financial companies or otherwise; to promote market discipline by eliminating expectations that the Covernment will shield shareholders, creditors, and counterparties of such companies from Government will shield shareholders, creditors, and counterparties of the U.S. financial losses if they fail; and to respond to emerging threats to the stability of the U.S. financial system.³

Section 113 of DFA gives the Council authority to designate a U.S. nonbank financial company for supervision by the Board of Governors of the Federal Reserve System ("Federal Reserve") and subject it to the prudential standards of Title I if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, could pose a threat to the financial stability of the U.S. The NPR requests comments concerning the criteria proposed by the Council for its use in exercising this authority and the processes used in information-gathering, consultation with primary regulators, and in designations and appeals from designations. The designation criteria set forth in the proposed rule in most respects track the statutory criteria for designation and generally contain appropriate criteria for the Council to consider in making a determination under Section 113. Unfortunately, however, despite having published an Advance Notice of Proposed Rulemaking ("ANPR") and received extensive public comments on these criteria before issuing the NPR, the NPR fails to describe the qualitative or quantitative considerations to be used in making assessments with regard to any of them and simply regroups the ten statutory criteria, for discussion purposes, into six categories. A purpose of an implementing rule, and an administrative rulemaking process, is to provide an analytical framework and context for the individual determinations that the Council will make in designating particular firms under Title I. Under the rule, firms notified of a proposed designation will have 30 days or less to respond as to why they should not be so designated. Without more context and elaboration in the rule, it will be difficult for a firm receiving that Council notice to know how to respond or what criteria or facts are relevant to include in a response.

We believe, as did many commentators on the Council's ANPR, that one metric in particular should outweigh all others and should be used to exclude a firm from designation: "those firms that are already subject to consolidated supervision and/or heightened reporting requirements." We believe that this exclusion from designation under Section 113 should apply where (1) the Council has access to comprehensive and timely information concerning the firm, where through its primary regulator or directly, and (2) the primary regulator is a member

³ Pub. L. No. 111-203, § 112.

⁴ 76 Fed. Reg. at 4557.

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organization of the Council and has comprehensive supervisory and rulemaking authority over the type of entity comparable to those of the Federal Reserve. If this criteria (the eighth criterion listed in Section 113 and the sixth criterion as grouped in the NPR), is given an appropriate weight in light of the purposes of the statute and its interaction with other programs of federal weight and regulation, Money Funds would not be designated for regulation under Title I of the DFA.

For the reasons discussed in this Letter, Money Funds registered with the Securities and Exchange Commission ("SEC") should not be designated for regulation by the Federal Reserve under Section 113. We note as an initial matter that it is far from clear that *any* open-end investment company (*e.g.* a mutual fund), including a Money Fund, is within the definition of a "nonbank financial company" that is subject to designation under Title I of the DFA.⁵

Moreover, even if Money Funds were deemed to be "nonbank financial companies" within the meaning of Title I of DFA, Federal Reserve prudential regulation would be inappropriate and unnecessary in view of the SEC's authority, regulation and oversight over Money Funds – including its recent amendments to Rule 2a-7 under the Investment Company Act of 1940 ("Investment Company Act") and related rules, as well as its continuing review of Act of 1940 ("Investment Company Act") and related rules, as well as its continuing review of these issues, a review in which we understand the Council will participate. Moreover, although the Council has yet to develop recommendations concerning the prudential standards under the Council has yet to develop recommendations regulation, it is clear that the

⁵ Section 102 of DFA defines the universe of "nonbank financial companies," that potentially are subject to designation under Title I, by reference to the financial powers of Section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k) (the "BHC Act"). Section 4(k) in turn has its own list of activities, including those permitted under Section 4(c)(8) of the BHC Act and Regulation K, 12 C.F.R. § 211. Other parts of the BHC Act (Sections 4(c)(5), 4(c)(6) and 4(c)(7) of that Act) authorize investing in securities and in investment companies, and 4(c)(8) and Regulation K have been interpreted by the Federal Reserve to include sponsoring, advising, administering and providing other services to open-end and closed end investment companies, as well as dealing and underwriting in securities (as contrasted to investing, reinvesting and trading). But the Federal Reserve has gone out of its way <u>not</u> to determine that being, or controlling, an open-end investment company is a permitted Section 4(c)(8) or 4(k) activity. See 12 C.F.R. §§ 211.10(a)(11), 225.28(b)(6), 225.86(b)(3), 225.125; Petition of the United States in Board of Governors of the Federal Reserve System v Investment Company Institute (in U.S. Supreme Court Docket No. 79-927, October Term, 1979), 450 U.S. 46 (1981). The Federal Reserve has <u>not</u> reinterpreted these provisions in wake of the Gramm Leach Bliley Act's 1999 repeal of Section 20 of the Glass-Steagall Act to permit bank holding companies or financial holding companies to be or control an open-end investment company using BHC Act Section 4(c)(8) or 4(k) powers. Because the Federal Reserve has not determined that being or controlling an openend investment company is an eligible activity under those provisions, it would appear that the activity of being an open end investment company is not a "financial" activity and thus mutual funds are not "nonbank financial companies" for purposes of Title I of Dodd Frank. Cf. Citicorp v Bd. of Governors, 936 F.2d 66 (2d Cir. 1991), cert. denied 502 U.S. 1031 (1992) (Federal Reserve Board cannot simultaneously interpret the BHC Act in two different, conflicting ways).

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general standards identified by statute in Section 115 and Section 165 (directing and authorizing the Federal Reserve to adopt prudential standards for supervised nonbank financial companies) are either addressed in current regulation of Money Funds in a manner far more robust than for other financial institutions (e.g., Money Funds' lack of leverage, liquidity requirements, other financial institutions (e.g., Money Funds' lack of leverage, liquidity requirements) or are resolution plan, enhanced public disclosure, and overall risk management requirements) or are requirements (e.g., risk-based capital requirements) which, if applied to Money Funds, would undermine their vitally important role in providing highly liquid investments for individuals and institutions and critical short-term funding for issuers and others who rely upon them.

In October 2010, the President's Working Group on Financial Markets ("PWG") issued its Report on Money Market Fund Reform Options ("PWG Report" or "Report"). The Report acknowledges the concern of financial regulators that, notwithstanding the Money Fund reforms adopted by the SEC earlier this year, more should be done to address Money Funds' susceptibility to runs, such as the run precipitated by the bankruptcy of Lehman Brothers Holdings, Inc. ("Lehman") in September 2008 and the resulting losses at the Reserve Primary Fund, which held Lehman commercial paper. While the Report sets forth eight policy options which its drafters suggest could mitigate the susceptibility of Money Funds to runs, the which its drafters suggest could mitigate the susceptibility of Money Funds to runs, the discussion of the various options is accompanied by a sobering discussion of the potential serious and adverse ramifications – for investors, issuers, other financial market participants, and taxpayers – of the various courses of action. Thus, after an 18-month review, the PWG recommended further study and public comment.

The process recommended by the PWG that the SEC publish the various options in the PWG Report for public comment and that the Council also review these matters is the appropriate process to address any remaining concerns regarding Money Funds. During the comment period on the Council's earlier ANPR release, the SEC requested comments on the PWG Report and received over 75 public comments not only from the fund industry but also pwG Report and range of state and local governments, large and small businesses, retail investors from a broad range of state and local governments, large and small businesses, retail investors and other members of the public. With only three exceptions, the commenters overwhelmingly supported the retention of the current program of SEC regulation of Money Funds and stable NAV, with continued incremental improvements to the SEC's program of Money Fund

⁶ REPORT OF THE PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS - MONEY MARKET FUND REFORM OPTIONS (Oct. 2010), available at http://treas.gov/press/releases/docs/10.21%20PWG%20Report%20Final.pdf.

⁷ Submissions in response to the SEC's Request for Comment on PWG Report are available at: http://www.sec.gov/comments/s7-04-09/s70409.shtml.

⁸ Letters from Federal Reserve Bank of Richmond President Jeffrey Lacker (available at http://www.sec.gov/comments/4-619/4619-54.pdf); Paul A. Volcker (available at http://www.sec.gov/comments/4-619/4619-79.pdf); Shadow Financial Regulatory Committee (available at http://www.sec.gov/comments/4-619/4619-81.pdf).

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regulation.⁹ This is an overwhelming affirmation -- from industry participants, issuers, and other users of Money Funds -- that the SEC's regulation of Money Funds, including its more recent rules to strengthen Money Fund regulations, is appropriate and more than sufficient.

Section 113 designation and the accompanying Federal Reserve prudential regulation of nonbank financial companies are best utilized to address large, systemically important institutions that previously lacked comprehensive consolidated supervision (or, if they were subject to it, were inadequately supervised) and which, when overly dependent upon the short-term markets, pose the threat of creating the type of panic in the short-term markets that occurred in September 2008. Indeed, it was the precarious state of these entities and their exposure to the collapse in mortgage-related instruments that caused the 2008 market panic. Section 113 designation is unnecessary, inappropriate, and potentially harmful if applied to Money Funds.

The major points in this letter are as follows:

- Money Funds are a regulatory success. They are subject to robust regulation by the SEC, which has an excellent record in its oversight of Money Funds and a superior track record in this area in comparison to bank-type prudential regulation.
- Section 113 designation is for individual companies, not for an entire industry as a
 whole. There are over 650 separate Money Funds. Money Funds generally are
 not permitted to lend to one another or co-invest as groups. As a result, unlike
 banks, the financial conditions of different Money Funds are not linked to one

⁹ See e.g., Letters from the Financial Services Roundtable; Port of Houston Authority; Cincinnati/Northern Kentucky International Airport; Treasurer of the State of New Hampshire; the Business Council of New York State; Dallas Regional Chamber; Associated Industries of Florida; New Jersey Chamber of Commerce. Letter filed by the following associations of state and local entities: the American Public Power Association; the Council of Development Finance Agencies; the Council of Infrastructure Financing Authorities; the Government Finance Officers Association; the International City/County Managers Association; the International Municipal Lawyers Association; the National Association of Counties; the National League of Cities; the National Association of Local Housing Financing Agencies; the National Association of State Auditors, Comptrollers and Treasurers; the National Association of State Treasurers and the U.S. Conference of Mayors. Letter from the following businesses and associations: Agilent Technologies, Inc.; Air Products & Chemicals, Inc.; Association for Financial Professionals; The Boeing Company; Cadence Design Systems; CVS Caremark Corporation; Devon Energy; Dominion Resources, Inc.; Eastman Chemical Company; Eli Lilly & Company; Financial Executives International's Committee on Corporate Treasury; FMC Corporation; Institutional Cash Distributors; Kentucky Chamber of Commerce; Kraft Foods Global, Inc.; National Association of Corporate Treasurers; New Hampshire Business and Industry Association; Nissan North America; Pacific Gas and Electric Company; Safeway Inc.; Weatherford International; U.S. Chamber of Commerce.

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another. They cannot be lumped together as a single entity and designated significant under Section 113.

- Individual Money Funds should not be designated for prudential regulation by the Federal Reserve under Section 113. The prudential standards specified for Section 113 entities under the Federal Reserve's Section 165 authority are either addressed in current Money Fund regulation in a manner far more robust than for other financial institutions, or they are an inappropriate fit for Money Funds.
- Because Money Funds are already subject to comprehensive SEC regulations and the SEC has robust regulatory tools to address any situation in which a Money Fund presents undue risk, Money Funds should be excluded from designation where (1) the Council has access to comprehensive and timely information where (1) the Money Fund, either through the SEC or directly, and (2) the concerning the Money Fund, either through the SEC or directly, and has primary regulator, the SEC, is a member organization of the Council and has comprehensive supervisory (examination, reporting and enforcement powers) and rulemaking authority over Money Funds comparable to those that the Federal Reserve exercises over bank holding companies or that the Federal Reserve can exercise over Section 113 designated nonbank financial firms.
 - Regulators should proceed with caution on changes to Money Fund regulation that would impose undue burdens on their continued operation or that would create in investors an expectation of a *de facto* federal guarantee.
 - There are major flaws and gaps in the NPR, both substantive and procedural, including the failure to describe with specificity the quantitative and qualitative considerations to be used in making designations, the failure to propose exemptions as required by Section 170 of the DFA, failure to consider the impact on small business, failure to evaluate the paperwork and reporting burden associated with the proposed rules and related expansion of the mandate to designate firms as systemically important well beyond what was contemplated by Congress, failure to address the Constitutionality of Titles I and II of the DFA on which the rule is based, and proposal of the rules before the Council has been fully constituted with all of its statutorily-required members.

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Money Funds Represent a Regulatory Success, Particularly As Compared to Regulation of Depository Institutions II.

History and Importance of Money Funds

Money Funds are leading investors in the short-term debt instruments that are issued and traded in the "money market," including Treasury bills, bankers' acceptances, certificates of deposit, federal funds and commercial paper. 10 The money market is the single most important source of liquidity funding for the global financial system. It permits large institutions to meet short-term borrowing needs and invest cash holdings for brief periods. Issuers in the money market include companies whose financial strength allows them to issue commercial paper directly to buyers, without credit support or collateral. Other companies issue "asset-backed" commercial paper, secured by the pledge of mortgage loans, auto loans, credit card receivables, or other assets. Federal, state and local governments also use the money market to meet liquidity needs by issuing short-term paper, including municipal paper and Treasury bills. The Federal Reserve utilizes Money Funds in its reverse repurchase program.

Money Funds were first offered in the U.S. in 1971 as a way to preserve investor principal while earning a reasonable return – and for the first time made a market interest rate available to retail investors. They have become widely held by many types of investors and are subject to pervasive regulation and oversight by the SEC. Due in large part to SEC rules that require them to invest exclusively in specific high-quality, short-term instruments issued by financially stable entities, they also have enjoyed a high degree of success, greatly increasing in number and in assets under management. Thus, Money Funds are now among the most widely held, low-risk and liquid investments in the world. 11

For investors of all types, Money Funds offer numerous benefits. They come in several forms, including both taxable funds (which invest in securities such as Treasury bills and commercial paper) and tax-free funds (which generally invest in municipal securities). Funds

¹⁰ Commercial paper consists of short-term, promissory notes issued primarily by corporations with maturities of up to 270 days but averaging about 30 days. Companies use commercial paper to raise cash for current operations as it is often cheaper than securing a bank loan. Federal Reserve Board, Commercial Paper, available at http://www.federalreserve.gov/releases/cp/about.htm.

According to the Investment Company Institute, as of February 16, 2011, Money Funds had over \$2.7 trillion in assets under management. See Investment Company Institute, Money Market Mutual Fund Assets, Feb. 17, 2011, available at http://www.ici.org/research/stats/mmf/mm_02_17_11. Investment Company Institute historical weekly money market data show that assets under management have declined significantly since January 2009. As of January 7, 2009, Money Funds had over \$3.8 trillion in assets. See Investment Company Institute, Weekly Total Net Assets (TNA) and Number of Money Market Mutual Funds, available at http://www.ici.org/pdf/mm_data_2010.pdf.

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that invest in short-term corporate and bank debt, but not government securities, are also known as "prime" Money Funds. 12 Investors can choose between and among funds that offer slightly higher yields, funds that offer less credit risk, and funds that offer tax advantages. For institutional investors, Money Funds offer low cost, convenient ways to invest cash in the shortterm. Many institutional investors, including companies and governmental entities, have cash balances swept from their operating accounts into Money Funds on a nightly basis. For retail investors, Money Funds continue to offer a low-risk, low-expense way to diversify liquid

Based on Investment Company Institute data, as of December 2010, there were approximately 652 Money Funds. As of February 16, 2011, Money Funds held over \$2.7 approximately 652 Money Funds. Money Funds account for investments in almost 40% of trillion in assets under management. Money Funds account for investments in almost 40% of outstanding commercial paper, approximately two-thirds of short-term state and local government debt, and a substantial amount of outstanding short-term Treasury and federal agency securities. 15 During the more than 25 years since Rule 2a-7 was adopted in 1983, over \$335 trillion has flowed in and out of Money Funds. 16

Performance Comparison of Money Funds to Bank Failures

In their early years, banks and their trade associations viewed Money Funds as competitors for retail business, and supported efforts to subject Money Funds to "bank-like" or "prudential" supervision. 17 Policy makers, however, recognized that bank-like regulation would

¹² See Sue Asci, Prime Money Funds See Recent Inflows, Investment News, Feb. 22, 2009.

¹³ Investment Company Institute, Trends in Mutual Fund Investing, Jan. 27, 2011, available at http://www.ici.org/research/stats/trends/trends_12_10.

¹⁴ Of this amount, retail Money Funds held an estimated \$932 billion of this sum, while institutional funds held close to \$1.8 trillion – though this distinction is somewhat arbitrary. Investment Company Institute, Money Market Mutual Fund Assets, Feb. 16, 2011, available at http://www.ici.org/research/stats/mmf/mm_02_17_11.

¹⁵ See REPORT OF THE PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, MONEY MARKET FUND REFORM OPTIONS 7, available at http://treas.gov/press/releases/docs/10.21%20PWG%20Report%20Final.pdf.

¹⁶ See Investment Company Institute, Report of the Money Market Working Group, Mar. 17, 2009 (hereinafter "ICI Money Market Working Group Report"), at 38, available at www.ici.org/pdf/ppr_09_mmwg.pdf.

¹⁷ See, e.g., Shooting at Money Market Funds, Time, Mar. 23, 1981, available at http://www.time.com/time/magazine/article/0,9171,952946,00.html. The article states that that banking and savings institutions had "undoubtedly been hurt by the Money Funds" and that "banks and savings and loans have launched drives to bring them down...Last week the U.S. League of Savings Associations urged the Government to impose sharp restrictions on the money market funds and asked the Federal Savings and Loan Insurance Corporation to pledge up to \$7 billion in low-cost loans." The article further notes that "Senate Banking Committee Chairman Jake Garn of Utah wants to prevent money market funds from offering check-writing privileges; Congressman James Footnote continued on next page

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effectively kill off what has become not only an important investment choice for millions of individuals and institutions, ¹⁸ but also a highly efficient and essential mechanism to fund the needs of business and government borrowers in the short-term market. 19

Moreover, Money Funds have enjoyed a stunningly superior safety record compared to insured depository institutions. Only two Money Funds have "broken the buck" and returned shareholders less than 100 cents on the dollar: the Community Bankers U.S. Government Fund, which in 1994 repaid its investors 96 cents on the dollar, ²⁰ and the Reserve Primary Fund, which

Leach of Iowa has introduced a bill that would diminish the funds' appeal by setting reserve requirements on them...The funds are also under heavy assault in several state legislatures." See also Karen W. Arenson, Volcker Proposes Money Funds Be Subject to Rules on Reserves, N.Y. TIMES, June 26, 1981 (noting that former Federal Reserve Chairman Paul A. Volcker testified before a Congressional subcommittee that money market funds should be subject to regulations that would make them more competitive with banking institutions and less attractive to investors. Mr. Volcker also testified that reserve requirements were a key part of monetary policy and because they could not be removed from banking institutions, also should apply to other investment vehicles); Beatson Wallace, Money Funds Aren't Banks, BOSTON GLOBE, May 21, 1981 (noting that "[m]oney market funds continue to be the whipping boy of the banking industry and the delight of the small sum investor.") The article explains that Treasury Secretary Donald T. Regan testified that "imposing new controls on our financial markets would be the wrong approach to assisting the thrift industry," but that nevertheless Senator Jake Garn "persists in his effort to curry support for legislation to curb the funds' check-writing feature and make the funds maintain a percent of their assets in a reserve account."

¹⁸ See, e.g., Competition and Conditions in the Financial System, Hearings Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 97th Cong., 939 (1981) (statement of former SEC Commissioner John R. Evans, who testified that "we are very concerned with suggestions that legislation should be enacted which would impose bank-type regulation on money market funds to the detriment of [public] investors." Noting that "many depository institutions are having difficulty attracting savings during a period when money market funds are experiencing dramatic growth....We can understand why certain depository institutions might like their competitors to be restricted. We believe, however, that any consideration of legislation to impose bank-type regulatory burdens and limitations on money market funds should include an evaluation of the existing regulation of such funds, the present protection provided to investors, and the negative impact that such proposals would have on the millions of people who invest in money market funds." Further, "[i]t is the Commission's view that the harm to small investors, and the inconvenience to large investors, which could result from the imposition of bank-type regulations on money market funds may not be significantly offset by any benefit to banks and thrift institutions."

¹⁹ See Phillip R. Mack, Recent Trends in the Mutual Fund Industry, 79 Fed. Reserve Bull. 1001(1993), available at http://findarticles.com/p/articles/mi_m4126/is_n11_v79/ai_14714669/pg_5/?tag=content;col1, stating that "[m]oney market mutual funds grew rapidly in the late 1970s and early 1980s, when interest rates on money market instruments exceeded regulatory ceilings that applied to depository institutions. Flows from depositories to money funds supported expansion of the commercial paper market, an important alternative to bank loans for businesses."

²⁰ Note that the fund had only institutional investors, so individual investors were not directly harmed. See ICI Money Market Working Group Report, at 39, available at www.ici.org/pdf/ppr_09_mmwg.pdf. See Saul S. Cohen, The Challenge of Derivatives, 63 Fordham L. Rev. 1993, 1995 n.15 (1995) (internal citations omitted).

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was forced to liquidate in September 2008 as a result of a run triggered by Lehman's bankruptcy and the fund's holdings of Lehman commercial paper. The Reserve Primary Fund has returned to shareholders more than 99 cents on the dollar. Significantly, no taxpayer funds were used to bail out shareholders.

Money Funds achieved this success under the regulation and oversight of the SEC and its Division of Investment Management, which, with a staff of 162 in fiscal year 2009, is relatively small in comparison with that of the banking agencies. In fiscal year 2009, total funding appropriated for SEC programs was \$960.2 million. Of that amount, funding for the Division of Investment Management was only \$47.6 million. At the core of this regulatory program is SEC Rule 2a-7, which in eleven pages imposes sound principals that are the secret of the stability and solvency of Money Funds: invest only in very short-term, high quality, marketable debt instruments in a diversified manner, and do not use any leverage. Rule 2a-7 is the Occam's Razor of financial regulation.

In comparison, the prudential regulation of banks involves four (formerly five) federal regulators and over fifty regulators in states and other districts. The federal agencies alone require over 26,000 full-time employees.²⁴ The federal banking code – Title 12 of the United States Code and Title 12 of the Code of Federal Regulations – totals fourteen volumes and many thousands of pages of requirements and prohibitions. Yet, during the 40 years since the launch of the first Money Fund – a period during which the Money Fund industry experienced exactly two "failures" – some 2,830 depository institutions have failed, and an additional 592 were the subject of "assistance transactions" in which the government injected capital to keep them

²¹ See Press Release, Reserve Primary Fund to Distribute \$215 Million (July 15, 2010), available at http://www.reservefunds.com/pdfs/Primary%20Distribution_71510.pdf; see also SEC Press Release: Reserve Primary Fund Distributes Assets to Investors (Jan. 29, 2010), available at http://www.sec.gov/news/press/2010/2010-16.htm.

²² See U.S. Securities and Exchange Commission, In Brief, FY 2011 Congressional Justification, at 8, available at http://www.sec.gov/about/secfyl1congbudgjust.pdf. We note that the SEC's program of regulating and supervising investment companies has been extraordinarily efficient and effective to date and that the SEC is appropriately seeking additional funding to carry out its new responsibilities under the DFA.

²³ *Id.*, at 10.

²⁴ FDIC 2009 Annual Report; FRB 2009 Annual Report; OCC 2009 Annual Report; OTS 2009 Annual Report.

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afloat.²⁵ From 1971 until February 4, 2011, total estimated FDIC losses incurred in connection with failed banks or assistance transactions amount to \$164,820,462,000.26

Performance of Money Funds During the Financial Crisis

Even in times of greatest financial stress, Money Funds have proved to be more stable than depository institutions. Since January 2008, as a result of the financial crisis that followed the burst of the housing bubble and the collapse of mortgage-backed securities investments, at least 344 banks have failed,²⁷ and even more would have failed but for dozens of federal programs that infused banks with cash. The Federal Reserve, Department of the Treasury, and FDIC spent approximately \$2 trillion on an array of programs to infuse cash into the banking system. 28 In addition, the Federal Reserve has kept interest rates close to zero, allowing banks to borrow at almost no cost and to lend at higher rates so as to practically guarantee risk-free profits. This is estimated to cost savers \$350 billion each year as banks do not have to compete for depositors' funds, and therefore may offer only low interest rates on deposits.²⁹

During the same period, only one Money Fund, the Reserve Primary Fund, failed to return investors' shares at less than 100 cents on the dollar. Nonetheless, the massive requests for redemptions by the Reserve Primary Fund shareholders beginning on September 15, 2008

FDIC Database of Failures and Assistance Transactions, available at http://www2.fdic.gov/hsob/SelectRpt.asp?EntryTyp=30.

²⁶ FDIC Database of Failures and Assistance Transactions, available at http://www2.fdic.gov/hsob/SelectRpt.asp?EntryTyp=30.

²⁷ FDIC Failed Bank List, available at http://www.fdic.gov/bank/individual/failed/banklist.html.

²⁸ Congressional Oversight Panel, September Oversight Report: Assessing the TARP on the Eve of Its Expiration, at

²⁹ Yalman Onaran and Alexis Leondis, Wall Street Bailout Returns 8.2% Profit Beating Treasury Bonds, Bloomberg (Oct. 20, 2010), available at http://www.bloomberg.com/news/2010-10-20/bailout-of-wall-streetreturns-8-2-profit-to-taxpayers-beating-treasuries.html.

³⁰ On September 16, 2008, the Reserve Primary Fund's shares were priced at 97 cents after it wrote off debt issued by Lehman Brothers, which had declared bankruptcy the day before. Even so, this event was in large part due to misconduct by the Fund's management, as the SEC has alleged in a pending enforcement proceeding. See SEC Press Release: SEC Charges Operators of Reserve Primary Fund With Fraud, May 5, 2009, available at http://www.sec.gov/news/press/2009/2009-104.htm and related SEC Complaint, available at http://www.sec.gov/litigation/complaints/2009/comp21025.pdf, at 35. Moreover, Reserve Fund shareholders recovered more than 99 cents on the dollar after it closed. Press Release, Reserve Primary Fund to Distribute \$215 Million (July 15, 2010), available at http://www.reservefunds.com/pdfs/Primary%20Distribution_71510.pdf; SEC Press Release: Reserve Primary Fund Distributes Assets to Investors (Jan. 29, 2010), available at http://www.sec.gov/news/press/2010/2010-16.htm.

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when Lehman declared bankruptcy, and Reserve's announcement the following day that it would re-price its shares, triggered a run by investors in other prime Money Funds who feared that those funds' holdings of commercial paper of other financial institutions would decline in value. Numerous Money Funds liquidated assets or imposed redemption limits³¹ and a number of funds Numerous Money Funds liquidated assets or other affiliated persons.³² As the PWG Report describes, obtained support from their advisers or other affiliated persons. He are the liquidation of Money Fund assets to meet redemptions led to a reduction of Money Fund holdings of commercial paper by about 25 percent.³³

No Money Funds were "bailed out" by the government, but the extraordinary conditions in the market, including illiquidity in the secondary market for commercial paper, led to the adoption of special measures to restore confidence in the money markets and Money Funds and address the freeze-up in the commercial paper market. The Treasury Department implemented a limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "remporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Temporary Guarantee Program for Money Market Funds" whereby Money Funds could, limited "Te

The Federal Reserve also created an "Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility" ("AMLF") to provide credit for banks and bank holding companies to finance their purchases of commercial paper from Money Funds. This program

In response to a request, the SEC, by order, permitted suspension of redemptions in certain Reserve funds in order to allow for orderly liquidation. *See Matter of The Reserve Fund*, Investment Company Act Release No. 28386 (Sept. 22, 2008), 73 Fed. Reg. 55572 (Sept. 25, 2008); Reserve Municipal Money-Market Trust, et al., Investment Company Act Release No. 28466 (Oct. 24, 2008), 73 Fed. Reg. 64993 (Oct. 31, 2008).

The SEC notes that with the exception of the Reserve Primary Fund, all of the funds that were exposed to losses during 2007-2008 from debt securities issued by structured investment vehicles or as a result of the default of debt securities issued by Lehman Brothers Holdings Inc. obtained support of some kind from their advisers or other securities issued by Lehman Brothers Holdings Inc. obtained support of some kind from their advisers or other affiliated persons, who absorbed the losses or provided a guarantee covering a sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons, who absorbed the losses or provided a guarantee covering a Sufficient amount of losses to prevent affiliated persons.

See REPORT OF THE PRESIDENT'S WORKING GROUP ON FINANCIAL MARKETS, MONEY MARKET FUND REFORM OPTIONS 12, available at http://treas.gov/press/releases/docs/10.21%20PWG%20Report%20Final.pdf.

Press Release, Treasury Announces Guaranty Program for Money Market Funds (Sept. 29, 2008), available at http://www.treas.gov/press/releases/hp1147.htm.

Press Release, Treasury Announces Expiration of Guarantee Program for Money Market Funds (Sept. 19, 2009), available at http://www.ustreas.gov/press/releases/tg293.htm.

Federal Reserve Board, Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, available at http://www.federalreserve.gov/monetarypolicy/abcpmmmf.htm.