

MEMO# 24505

August 20, 2010

SEC Staff No-Action Position Concerning NRSRO Designation Requirement in Rule 2a-7

[24505]

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TO: ACCOUNTING/TREASURERS MEMBERS No. 26-10
FIXED-INCOME ADVISORY COMMITTEE No. 16-10
INVESTMENT COMPANY DIRECTORS No. 19-10
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 39-10
PRIMARY CONTACTS - MONEY MARKET FUNDS No. 2-10
SEC RULES MEMBERS No. 84-10
SMALL FUNDS MEMBERS No. 46-10 RE: SEC STAFF NO-ACTION POSITION CONCERNING
NRSRO DESIGNATION REQUIREMENT IN RULE 2A-7

The staff of the Securities and Exchange Commission's Division of Investment Management has issued a no-action letter to ICI with respect to new requirements in amended Rule 2a-7 under the Investment Company Act of 1940 concerning nationally recognized statistical rating organizations ("NRSROs"). [\[1\]](#) In particular, rule amendments adopted earlier this year require that by December 31, 2010: (1) money market fund boards of directors designate at least four NRSROs whose ratings the fund will use to determine portfolio security eligibility under the rule; and (2) funds disclose designated NRSROs in their statements of additional information. As discussed below, due to certain provisions of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the staff's letter provides relief from compliance with these Rule 2a-7 requirements.

The staff's letter notes that participants in the mutual fund industry have raised questions about the effect of Section 939A of the Dodd-Frank Act on the NRSRO designation requirement. Section 939A requires the SEC to review its regulations that require the use of an assessment of the creditworthiness of a security or money market instrument, as well

as any references to or requirements regarding credit ratings in such regulations. The SEC must modify any such regulation it identifies to remove any reference to or requirement to rely on credit ratings and must substitute a standard of creditworthiness it deems appropriate. The letter states that industry participants have pointed out that the required elimination of references to credit ratings will render fund board NRSRO designations irrelevant.

The staff's letter explains that a purpose of the NRSRO designation requirement was to shift to the board the responsibility for deciding which NRSROs it would use in determining whether a security is an eligible security under Rule 2a-7. It indicates that in light of the requirements of Section 939A, the staff agrees that such a shift "would not be a useful exercise" at this time. The letter states that, "[a]ccordingly, the Division of Investment Management would not recommend that the [SEC] institute an enforcement action under section 2(a)(41) of the Investment Company Act and rules 2a-4 and 22c-1 thereunder if a money market fund board does not designate NRSROs and does not make related disclosures in its statement of additional information before the [SEC] has completed the review of rule 2a-7 required by [Section 939A] and has made any modifications to the rule." The letter further provides that funds relying on this no-action position must continue to comply with the obligations for determining and monitoring eligible securities set forth in Rule 2a-7 as in effect before May 5, 2010 (other than the limitation on holding unrated asset-backed securities rescinded by the 2010 rulemaking).

Frances M. Stadler
Deputy Senior Counsel

[Attachment](#)

endnotes

[\[1\]](#) A copy of the letter is attached.