

MEMO# 23016

October 23, 2008

SEC Issues No-Action Letter Relating to Money Market Investor Funding Facility

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TO: INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 32-08
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 38-08
SEC RULES MEMBERS No. 129-08 RE: SEC ISSUES NO-ACTION LETTER RELATING TO
MONEY MARKET INVESTOR FUNDING FACILITY

The staff of the Securities and Exchange Commission's Division of Investment Management issued a no-action letter to JP Morgan Securities Inc. and certain affiliates (collectively "JPM") and various money market fund industry participants stating that it would not recommend enforcement action to the Commission under Sections 2(a)(41), 10(f), 12(d)(3), 17(a)(2), 17(d), 17(e)(1), 34(b), and 35(d) of the Investment Company Act of 1940, and Rules 2a-4, 17(d)-1, and 22c-1 under the Act in connection with the establishment of a temporary program designed to provide liquidity to the U.S. money markets. [\[1\]](#) The program is the Money Market Investor Funding Facility ("MMIFF"). The staff's response and the JPM's request are attached.

Under the MMIFF, money market funds will sell certain commercial paper, bank notes, and certificates of deposit having remaining maturities of 90 days or less and satisfying certain ratings criteria ("Eligible Assets") to certain special purpose vehicles ("SPVs") that have entered into liquidity facilities with the Federal Reserve Bank of New York and for which JPM is, among other things, the structuring and referral agent. In exchange, money market funds will receive cash and asset backed commercial paper of the SPVs ("Commercial Paper Notes"). The SPVs will cease purchasing Eligible Assets on April 30, 2009, unless the Federal Reserve extends the MMIFF.

Relief Applicable to all Funds

Rule 2a-7

Rule 2a-7 under the Investment Company Act provides exemptions from Sections 2(a)(41), 34(b), and 35(d) of the Act and Rules 2a-4 and 22c-1 thereunder necessary to permit money market funds to use the amortized cost method of valuation to maintain a stable per share net asset value, typically \$1.00. JPM requested relief regarding the ability of money market funds to acquire Commercial Paper Notes issued by the SPVs. In particular, they requested, and the staff concurred, that the Commercial Paper Notes may be treated as “Asset Backed Securities” as defined in Rule 2a-7.

JPM also requested that the staff give no-action relief if money market funds investing in the Commercial Paper Notes comply with Rule 2a-7’s diversification requirement through an alternative method and subject to certain conditions. Under this alternative method, money market funds would not “look through” the SPVs in applying the Rule 2a-7 diversification test that otherwise would be applicable under Rule 2a-7(c)(4)(ii)(D)(1)(i). [\[2\]](#) The staff granted the requested relief based on the following conditions:

1. A money market fund may not acquire Commercial Paper Notes issued by the SPVs if it would result in such securities collectively exceeding 2.5 percent of the money market fund’s total assets;
2. All Commercial Paper Notes must be “First Tier Securities,” as defined in Rule 2a-7 when acquired by a money market fund;
3. For purposes of a money market fund making additional purchases of securities of an issuer (where that issuer is one of the 10 issuers the securities of which may be held by an SPV), the money market fund must add the entire value of the Commercial Paper Notes it holds to the value of other holdings of securities of the issuer held by the money market fund for diversification purposes; and
4. If a money market fund purchases Commercial Paper Notes in the secondary market (i.e., not in connection with a sale of Eligible Assets to an SPV pursuant to the MMIFF), it must treat such Commercial Paper Notes as set forth in condition 3 above for purposes of the diversification requirements of Rule 2a-7 (i.e., prior to such purchase, it must consider the entire value of each Commercial Paper Note as additional exposure to each of the issuers whose securities may be held by the SPV that issued the Commercial Paper Note for diversification purposes).

Section 12(d)(3)

Section 12(d)(3) of the Investment Company Act generally prohibits a money market fund from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under the Investment Company Act. JPM requested relief because many funds are advised by affiliated persons of financial institutions that have significant securities

related businesses and also are major issuers of certain of the Eligible Assets held by an SPV. Based on the facts and representations in JPM's letter, and in particular the fact that the MMIFF is a temporary measure designed first and foremost to provide liquidity to money market funds, the staff granted the no-action relief.

Relief Applicable Only to Funds Advised by JPM

JPM also requested relief from Sections 17(a)(2), 17(d), 17(e) and 10(f) of the Investment Company Act and Rule 17d-1 thereunder to allow its affiliated money market funds ("Funds") to participate in the MMIFF despite the involvement of JPM in the design and operation of the SPVs. [\[3\]](#)

Based on the facts and representations in JPM's letter, and in particular the circumstances and purposes behind the MMIFF and the terms on which the Funds would participate in the MMIFF, the staff granted the requested relief.

Jane G. Heinrichs
Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See J.P. Morgan Securities Inc., SEC No-Action Letter (pub. avail. October 22, 2008).

[\[2\]](#) Rule 2a-7(c)(4)(i)(A) generally requires that, immediately after the acquisition of any security, a taxable money market fund not have invested more than five percent of its total assets in securities issued by that issuer. Rule 2a-7(c)(4)(ii)(D)(1)(i) treats the special purpose entity (such as the SPVs) as the issuer of an asset backed security and therefore requires that Rule 2a-7's diversification requirements be met with respect to the special purpose entity. The rule creates an exception to this treatment, however, requiring a money market fund to "look through" the special purpose entity to any issuer of qualifying assets whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the special purpose entity ("Ten Percent Obligor"). Specifically, a money market fund must treat each Ten Percent Obligor as if it issued a proportionate amount of the special purpose entity.

[\[3\]](#) Section 17(a)(2) of the Investment Company Act prohibits any affiliated person of a registered investment company from knowingly selling a security to, or purchasing a security from, such registered investment company. Section 17(d) of the Investment Company Act generally prohibits any affiliated person of a registered investment company

to effect any transaction in which such registered investment company is a joint or a joint and several participant with such person in contravention of rules adopted by the Commission. Rule 17d-1 under the Investment Company Act, in relevant part, makes it unlawful for an affiliated person of a registered investment company, acting as principal, to participate in, or effect any transaction in connection with, a joint enterprise or other joint arrangement or profit-sharing plan, as defined in the rule, in which the investment company is a participant, without prior Commission approval. Section 17(e) prohibits, among other things, an affiliated person of a registered investment company, or an affiliated person of such person, from “acting as agent, to accept from any source any compensation . . . for the purchase or sale of any property to or for such registered investment company. . . except in the course of such person’s business as an underwriter or broker.

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