

**MEMO# 22976**

October 8, 2008

## **ICI Receives SEC No-Action Letter Relating to Treasury Department's Guarantee Program for Money Market Funds**

[22976]

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TO: INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 27-08  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 33-08  
SEC RULES MEMBERS No. 117-08 RE: ICI RECEIVES SEC NO-ACTION LETTER RELATING TO  
TREASURY DEPARTMENT'S GUARANTEE PROGRAM FOR MONEY MARKET FUNDS

The staff of the Securities and Exchange Commission's Division of Investment Management today issued a no-action letter to the Institute stating that it will not recommend enforcement action to the Commission under Section 18(f) of the Investment Company Act of 1940 or the rules thereunder if eligible money market funds ("Funds") participate in the Temporary Guarantee Program for Money Market Funds ("the Program") offered by the U.S. Department of the Treasury by entering into guarantee agreements with the Treasury (collectively, the "Agreements"). The staff's letter and Institute's request are attached.

Under the Program and the terms of the Agreements, the Treasury will guarantee to shareholders of Funds that participate in the Program ("Participating Funds") that they will receive \$1.00 for each Participating Fund share held as of the close of business on September 19, 2008 ("Designated Shares"). Any increase in the number of shares of the Participating Fund held in a shareholder's account after the close of business on September 19, 2008 and any purchase of shares of a Participating Fund for a new account after the close of business on September 19, 2008 (collectively, "Non-Designated Shares") will not be guaranteed. The guarantee would be triggered if a Participating Fund's net asset value per share falls below \$0.995 per share (a "Guarantee Event"). A Participating Fund must be liquidated on or before the thirtieth day following the occurrence of a Guarantee Event

relating to that Fund. For Designated Shares, any difference between the amount received by a shareholder in connection with a liquidation and \$1.00 per share would be covered under the Program.

Section 18(f) of the Investment Company Act provides that a mutual fund may not issue any class of senior security or sell any such security of which it is the issuer unless certain conditions are met. Section 18(g) defines “senior security” broadly to include any stock of a class having priority over any other class as to distribution of assets or payment of dividends. The Institute requested no-action relief out of concern that Designated Shares could be deemed to be “senior securities” because they will be covered by the guarantee and Non-Designated Shares will not be covered by the guarantee.

The Institute’s letter, however, argued that Designated Shares should not be deemed to be “senior securities” within the meaning of Section 18(g). As discussed in our letter, this conclusion is consistent with the purposes and legislative history of the Investment Company Act. The Institute’s letter also notes that the Program does not raise any of the concerns that prompted the adoption of Section 18.

Based on the facts and representations in the Institute’s letter, the SEC staff granted the requested relief.

Jane G. Heinrichs  
Associate Counsel

[Attachment](#)

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