

**MEMO# 5547**

February 3, 1994

## **SEC NO-ACTION LETTER PERMITTING FUNDS TO DETERMINE LIQUIDITY OF RESTRICTED COMMERCIAL PAPER**

February 3, 1994 TO: MONEY MARKET FUNDS AD HOC COMMITTEE NO. 3-94 SEC RULES MEMBERS NO. 6-94 RE: SEC NO-ACTION LETTER PERMITTING FUNDS TO DETERMINE LIQUIDITY OF RESTRICTED COMMERCIAL PAPER

\_\_\_\_\_ The Division of Investment Management has issued the attached interpretive no-action letter permitting mutual funds to determine the liquidity of restricted commercial paper. A copy of the letter is attached. Specifically, the staff's letter states that a fund's board of directors may conditionally determine that commercial paper not registered under the Securities Act of 1933 in reliance on Section 4(2) of that Act is liquid for purposes of the 15% limitation on a mutual fund's investment in illiquid securities. The letter notes that the Commission has taken the position that restricted securities generally are regarded as illiquid and that 4(2) commercial paper is regarded as a restricted security because it may be resold only if the offering is registered under the Securities Act or qualifies for an exemption from registration thereunder (for example, under Rule 144A). The staff's position is subject to the following conditions: (1) the commercial paper must not be traded flat or in default as to principal or interest; and (2) the paper must be rated in one of the two highest rating categories by at least two NRSROs, or if only one NRSRO rates the security, by that NRSRO; if the security is unrated, the board must determine that the security is of equivalent quality. The letter states that the board may delegate to the fund's adviser the responsibility for determining and monitoring the liquidity of 4(2) commercial paper, but that "the board remains ultimately responsible for liquidity decisions." Amy B.R. Lancellotta Associate Counsel Attachment