

rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

#### PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 74 FR 12055–12058 on March 23, 2009.

Done in Washington, DC, this 18th day of September 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–22960 Filed 9–22–09; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Part 270

[Release No. IC–28903; File No. S7–20–09]

RIN 3235–AK33

#### Disclosure of Certain Money Market Fund Portfolio Holdings

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final temporary rule; request for comment.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) is adopting an interim final temporary rule under the Investment Company Act of 1940 to require a money market fund to report its portfolio holdings and valuation information to the Commission under certain circumstances. The new reporting requirement is designed to provide information substantially similar to that submitted by certain money market funds under the Temporary Guarantee Program for Money Market Funds established by the Department of the Treasury (“Treasury Department”), which will expire on September 18, 2009.

**DATES:** *Effective Date:* September 18, 2009 through September 17, 2010.

*Comment Date:* Comments should be received on or before October 26, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/final.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–20–09 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–20–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/final.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the rule, please contact one of the following members of the staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549: Adam B. Glazer, Senior Counsel, or Hunter Jones, Assistant Director at (202) 551–6792; for technical questions related to the submission of portfolio information to the Commission, in the Office of Information Technology, Rick Heroux, at (202) 551–8168.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting new rule 30b1–6T under the Investment Company Act of 1940 (“Investment Company Act” or “Act”)<sup>1</sup> as an interim final temporary

rule. We are soliciting comments on all aspects of the interim final temporary rule. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release.

#### I. Background

Money market funds are open-end management investment companies that invest in short-term obligations and have a principal investment objective of maintaining a net asset value of \$1.00 per share.<sup>2</sup> Since October 2008, most money market funds have participated in the Treasury Department’s Temporary Guarantee Program for Money Market Funds (“Guarantee Program”), which has guaranteed the \$1.00 share value of accounts held by investors as of September 19, 2008 in participating money market funds.<sup>3</sup> The Guarantee Program was established to help stabilize money market funds following a period of substantial redemptions that threatened the ability of some money market funds to maintain the \$1.00 share value.<sup>4</sup> The program will expire on September 18, 2009.<sup>5</sup>

Money market funds participating in the Guarantee Program have been required, in certain circumstances, to submit their portfolio schedules and related information each week to the Treasury Department and the Commission.<sup>6</sup> The Commission has

<sup>2</sup> See generally Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. Most money market funds seek to maintain a stable net asset value per share of \$1.00, but a few seek to maintain a stable net asset value per share of a different amount, e.g., \$10.00. For convenience, throughout this release, the discussion will simply refer to the stable net asset value of \$1.00 per share.

<sup>3</sup> Our staff estimates that approximately 79 percent of money market funds participated in the Guarantee Program, and that the money market funds that did not participate in the program were mostly funds that invest predominately in U.S. Treasury and U.S. Government securities.

<sup>4</sup> See Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), available at <http://www.treas.gov/press/releases/hp1147.htm>.

<sup>5</sup> See Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Nov. 24, 2008), available at <http://www.treas.gov/press/releases/hp1290.htm>; Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Mar. 31, 2009), available at <http://www.treas.gov/press/releases/tg76.htm>.

<sup>6</sup> See section 5(b) of the Guarantee Agreement that money market funds participating in the Treasury’s Guarantee Program were required to sign (“Guarantee Agreement”), available at [http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement\\_form.pdf](http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf) (requiring a fund to submit reports when their market-based net asset value is less than \$.9975).

<sup>1</sup> 15 U.S.C. 80a. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a–7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

found these reports very useful in monitoring money market funds, and we believe that continuing to receive this information will further our mission to protect investors. When the program expires, however, money market funds will no longer be required to submit such portfolio information, and we will not receive current information about money market fund holdings.

In June 2009, the Commission proposed new rules and rule amendments to reform the regulation of money market funds.<sup>7</sup> The proposal included a new rule and a new form N-MFP, on which money market funds would report to the Commission detailed information about their portfolio holdings, which we would use to monitor the funds.<sup>8</sup> We proposed to require that all money market funds submit more detailed information than we currently receive under the Guarantee Program, and we proposed that the information be filed in a format that would permit us to create a searchable database of money market fund information.<sup>9</sup> The proposed requirement that money market funds report detailed portfolio information to the Commission was designed to improve our ability to oversee those funds.<sup>10</sup>

We have received more than 125 comments on the money market fund amendments we proposed in June 2009. Of the approximately 40 commenters who addressed the proposals to require the reporting of portfolio holdings to the Commission, 33 generally supported such reporting.<sup>11</sup> Some commenters,

however, expressed concerns about the specific information required,<sup>12</sup> the timing of the disclosure,<sup>13</sup> and our intent to make the information publicly available.<sup>14</sup>

We will continue to review these comment letters, and any additional comments we receive in response to our additional request for comment in this Release below. These comments will help us to determine whether, and if so how, to construct a permanent reporting regime that best meets our regulatory needs in protecting investors, while imposing no more regulatory burdens than are necessary. In the meantime, however, because of the importance of the information about money market fund portfolios, we are adopting an interim final temporary rule, rule 30b1-6T, that requires the reporting of basic securities portfolio information to the Commission in certain limited circumstances, as described below. The interim final temporary rule is designed to maintain our ability, as it currently exists under the Guarantee Program, to monitor money market funds while we consider whether to adopt the amendments we proposed in June 2009.

## II. Discussion

### A. Rule 30b1-6T

Rule 30(b)1-6T requires money market funds to provide the Commission weekly portfolio and valuation information substantially similar to what money market funds participating in the Guarantee Program provided to us and the Treasury Department under the program, if their market-based net asset value per share was below \$.9975. Each money market fund that is required to report must provide a portfolio schedule as of the last business day of each week that includes, with respect to the fund: (A) The name of the money market fund; (B) the fund's SEC file number; (C) the net asset value per share used to effect shareholder transactions; (D) the most recent market-based net asset value (including the value of any capital support agreement); (E) the most recent market-based net asset value (excluding

the value of any capital support agreement); (F) the date as of which the most recent market-based net asset value was calculated; (G) the total assets of the fund; (H) the total net assets of the fund; and (I) the number of shares outstanding. The portfolio schedule also must include, with respect to each security held: (A) The name of the security; (B) CUSIP number (if any); (C) principal amount; (D) maturity date; (E) final maturity date, if different from the maturity date as determined under rule 2a-7; (F) categorization of the security's status as a "First Tier Security," "Second Tier Security" or a security that is no longer an "Eligible Security" under rule 2a-7; (G) the most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (H) the most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute; (I) the amortized cost value of the security; and (J) in the case of a tax-exempt security, whether there is a demand feature.<sup>15</sup>

As was the case under the Guarantee Program, only a money market fund with market-based net asset value per share ("market-based NAV") below \$.9975 must report information under the rule.<sup>16</sup> Such a fund must notify the Commission by electronic mail and provide a portfolio schedule to the Commission promptly, but in no event later than the next business day.<sup>17</sup> Subsequently, the fund must report its portfolio schedule as of the last business day of the week, and submit it no later than the second day of the following week, until the fund's market-based NAV at the end of the week is \$.9975 or greater.<sup>18</sup> This information will

<sup>7</sup> Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] ("2009 Proposing Release"). The 2009 Proposing Release includes an extensive discussion of the market developments leading to the Commission's proposals. See *id.* at Section I.

<sup>8</sup> *Id.* (proposing new rule 30b1-6 and Form N-MFP).

<sup>9</sup> *Id.* at Section II.F.2.

<sup>10</sup> *Id.* at text preceding n.81.

<sup>11</sup> See, e.g., American Institute of Certified Public Accountants Comment Letter (Sept. 8, 2009); Bankers Trust Company, N.A. Comment Letter (Aug. 28, 2009); BlackRock Inc. Comment Letter (Sept. 4, 2009). Five commenters who addressed the reporting of portfolio holdings to the Commission did not generally support or oppose the proposal. One commenter expressed strong support for the Commission's efforts and offered specific comments on the proposed reporting of portfolio securities to the Commission. See Data Communiqué Comment Letter (Sept. 8, 2009). Two commenters opposed the reporting of portfolio holdings to the Commission. See The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Vera B. Lichtenberger Comment Letter (Sept. 3, 2009). See also American Benefits Council Comment Letter (Sept. 8, 2009) (expressing general support for the Commission's proposals); AARP Comment Letter (Sept. 8, 2009) (expressing general support for Commission's efforts to step up oversight of money market funds).

<sup>12</sup> See, e.g., Federated Investors, Inc. Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009); Fifth Third Asset Management, Inc. Comment Letter (Sept. 8, 2009); Investment Company Institute Comment Letter (Sept. 8, 2009).

<sup>13</sup> See, e.g., Investment Company Institute Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009); The Vanguard Group, Inc. Comment Letter (Aug. 19, 2009).

<sup>14</sup> See, e.g., BlackRock Inc. Comment Letter (Sept. 4, 2009); Federated Investors, Inc. Comment Letter (Sept. 8, 2009); T. Rowe Price Associates, Inc. Comment Letter (Sept. 8, 2009).

<sup>15</sup> See rule 30b1-6T(b)(3). Some items of information that money market funds report under the Guarantee Program are not included in rule 30b1-6T. These items, such as the identity of the fund's subadviser, are items to which we have access through other means.

<sup>16</sup> Rule 30b1-6T(a). In the Proposing Release, we requested comment on whether we should also require funds to provide us market-based portfolio value information on a nonpublic basis. In addition, we asked for comment on whether a certain price level of NAV (e.g., \$.9975) should trigger such disclosure, and how frequently money market funds should be required to provide this information (e.g., weekly or daily). See 2009 Proposing Release, *supra* note 7, at text accompanying and following n.253.

<sup>17</sup> Rule 30b1-6T(a)(1).

<sup>18</sup> Rule 30b1-6T(a)(2).

enable us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The portfolio information would be provided to the Commission as an attachment in Microsoft Excel format.<sup>19</sup> Excel format is the format that money market funds have been required to use for submissions under the Guarantee Program.<sup>20</sup>

### B. Nonpublic Nature of Information Reported

The information provided to the Commission may be sent by secure encrypted electronic mail<sup>21</sup> to the address we have established for this purpose.<sup>22</sup> In light of the nature of the information that will be provided to the Commission under rule 30b1-6T and the purposes for which the Commission is requiring the information, we have determined to maintain the confidentiality of the information submitted to the Commission,<sup>23</sup> and the rule states that the information will be nonpublic to the extent permitted by law.<sup>24</sup>

### C. Effective Date and Expiration of the Rule

Rule 30b1-6T will be effective as of September 18, 2009, so that the Commission will continue to receive the information that it has received in the past year under the Guarantee Program.

<sup>19</sup> Rule 30b1-6T(b)(3).

<sup>20</sup> Section 1(q) of the Guarantee Agreement, *supra* note 6.

<sup>21</sup> The reports may be sent through secure encrypted electronic mail by registering for an account at the following URL: <https://web1.zixmail.net/s/login?b=sec>. The Guarantee Program similarly allows for submission of encrypted information by electronic mail.

<sup>22</sup> The address we have established is [mmfweeklyholdings@sec.gov](mailto:mmfweeklyholdings@sec.gov). A money market fund providing information under rule 30b1-6T should not submit a confidential treatment request to the Commission, but must label its submission to the Commission as non-public.

<sup>23</sup> In the 2009 Proposing Release, we requested comment on whether portfolio holdings information filed with the Commission on proposed Form N-MFP should be submitted in nonpublic reports to the Commission, and we continue to consider comments on that rulemaking. See 2009 Proposing Release, *supra* note 7, at paragraph following n.251 and at text accompanying and following n.253.

<sup>24</sup> See rule 30b1-6T(c). The Freedom of Information Act ("FOIA") provides at least two pertinent exemptions under which the Commission has authority to withhold certain information. FOIA Exemption 4 provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8).

The rule, by its terms, will expire on September 17, 2010.<sup>25</sup> Setting a termination date of one year for the rule will necessitate further Commission action no later than the end of that period if the Commission determines to continue the same, or similar, requirements contained in the temporary rule.

### III. Request for Comment

The Commission requests comment on interim final temporary rule 30b1-6T. We will carefully consider the comments that we receive and intend to respond to them in a subsequent release. We may revise the rule in a number of ways, including (i) making the rule permanent, (ii) revising the circumstances that trigger a reporting obligation, (iii) revising the information that a fund must report under the rule, and (iv) revising the method of reporting the information to the Commission.

We seek comment generally on all aspects of the temporary rule, including the following:

**Expiration.** Rule 30b1-6T is a temporary rule and is set to expire on September 17, 2010. Should we remove the expiration provision of the rule and make the rule permanent? Should we extend the expiration date of the rule? If so, for how long? Should we allow the rule to expire?

**Timing.** The rule requires the submission of portfolio and valuation information to the Commission on a weekly basis. Should funds be required to provide the information more frequently (e.g., daily) or less frequently (e.g., monthly or biweekly)? The information must be provided within two business days after the end of the week, and we understand that funds that have submitted this information under the Guarantee Program have not encountered difficulties meeting the two-day deadline. Has the deadline imposed hardships in the past? Do money market funds anticipate future difficulties in meeting this deadline if they become subject to the reporting requirement? Should the rule allow a longer delay in submitting the information (e.g., three days or five days)? Should it require a shorter delay in submitting the information (e.g., one day)?

**Reporting Threshold.** The rule requires a money market fund to submit portfolio and valuation information to the Commission if its market-based NAV declines below \$9975. Is this an appropriate threshold to trigger reporting? Should the threshold be

lower (e.g., \$9970) or higher (e.g., \$9980 or \$9985)?

**Reporting Items.** Should we omit any of the disclosure requirements of rule 30b1-6T? If so, what information should be omitted from the proposed requirement, and why? Should we require additional or alternative information, such as the money market fund's client concentration levels, the percentage of the issue held by the fund, or last trade price and trade volume for each security?

**Regulatory Alternatives.** We request comment on feasible alternatives that would minimize the reporting burdens on money market funds.<sup>26</sup> We also request comment on the utility of the reports to the Commission in relation to the costs to money market funds of providing the reports.<sup>27</sup> In addition, we request comment on whether funds should be permitted to submit a hard copy of their portfolio schedule information to satisfy the initial or weekly reporting requirement.

### IV. Other Matters

The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.<sup>28</sup> This requirement does not apply, however, if the agency "for good cause finds \* \* \* that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>29</sup> The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.<sup>30</sup> This requirement also does not apply, however, if the agency finds good cause for making the rule effective sooner.<sup>31</sup>

For the reasons discussed in this release, we believe that we have good cause to act immediately to adopt this rule on an interim final temporary basis. We believe it is important for the Commission to continue to receive information from money market funds in certain circumstances so that we can monitor these funds. Adoption of the rule with an immediate effectiveness will minimize any disruption to the normal reporting schedule of money

<sup>26</sup> See section 30(c)(2)(A) of the Investment Company Act (requiring Commission to consider and seek public comment on feasible alternatives to the required filing of information that minimize reporting burdens on funds).

<sup>27</sup> See section 30(c)(2)(B) of the Investment Company Act (requiring Commission to consider and seek public comment on the utility of information, documents and reports to the Commission in relation to the associated costs).

<sup>28</sup> 5 U.S.C. 553(b).

<sup>29</sup> *Id.*

<sup>30</sup> 5 U.S.C. 553(d).

<sup>31</sup> 5 U.S.C. 553(d)(3).

<sup>25</sup> Rule 30b1-6T(d).

market funds that meet the reporting threshold. Avoiding such disruption should obviate the need for those funds to stop and restart their reporting procedures, and will allow us uninterrupted access to the information in the reports. This information will permit us to identify funds that present a greater risk that they will be unable to maintain their primary investment objectives.

The temporary rule takes effect on September 18, 2009 and will expire on September 17, 2010. For the reasons discussed above, we have acted on an interim final basis. We emphasize that we are requesting comment on the temporary rule. We will carefully consider the comments we receive, and we intend to respond to them in a subsequent release.

We find that there is good cause to have the temporary rule take effect on September 18, 2009, and that notice and public procedure in advance of effectiveness of the rule are impracticable, unnecessary, and contrary to the public interest.

#### V. Paperwork Reduction Act Analysis

Interim final rule 30b1-6T under the Investment Company Act contains a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>32</sup> The title for the new collection of information is "Rule 30b1-6T under the Investment Company Act of 1940, Weekly portfolio report for certain money market funds." We submitted burden estimates to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. Separately, we submitted the burden estimates to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved the burden estimates related to our adoption of rule 30b1-6T on an emergency basis. Our new rule is designed to improve our ability to oversee money market funds with a greater risk that they will be unable to maintain their primary investment objectives. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Rule 30b1-6T requires a money market fund whose market-based net asset value is less than \$.9975 to electronically (i) notify the Commission promptly and submit a portfolio schedule within one business day, and (ii) submit a portfolio schedule within two business days after the end of each

week until such time as the fund's market-based net asset value equals or exceeds \$.9975. The rule is intended to facilitate our oversight of money market funds. The respondents to rule 30b1-6T are investment companies that are regulated as money market funds under rule 2a-7. Compliance with the rule is mandatory for any money market fund whose market-based NAV is less than \$.9975. Responses to the disclosure requirements will be kept confidential.

We estimate, based on past experience under the Guarantee Program, that at any given time 10 money market funds will be required by rule 30b1-6T to provide weekly reports disclosing certain information regarding the fund's portfolio holdings. We estimate that money market funds would require an average of approximately 6 burden hours to compile and electronically submit the initial required portfolio holdings information, and an average of approximately 4 burden hours in subsequent reports.<sup>33</sup> Based on these estimates, we estimate the annual burden will be 210 hours per money market fund that is required to provide the information.<sup>34</sup> Based on an estimate of 10 money market funds submitting information under the rule, we estimate that, in the aggregate, rule 30b1-6T would result in 2100 hours, for all money market funds required to submit portfolio schedules.

#### VI. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of rule 30b1-6T and request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. Where possible, we request that commenters provide empirical data to support any positions advanced.

##### A. Benefits

We are adopting rule 30b1-6T to enable the Commission staff to continue to have effective oversight of money

<sup>32</sup> We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to gathering the required information.

<sup>33</sup> Because one report is required each week, a fund would submit 52 reports in one year. The first report would require 6 hours and subsequent reports would require 4 hours each. The difference between the hours is due to the fact that funds generally would not incur the additional start-up time applicable to the first report. The annual burden of the reporting requirement would be 210 hours (1 report  $\times$  6 hours = 6 hours, 51 reports  $\times$  4 hours = 204 hours, and 6 hours + 204 hours = 210 hours).

market funds. The rule would also improve the efficiency and effectiveness of the Commission's oversight by providing useful information about money market funds that report under the rule, and by enabling the staff to manage and analyze money market fund portfolio information more quickly and at a lower cost than is possible without electronic submissions of portfolio schedules.

##### B. Costs

Rule 30b1-6T will impose some costs on funds. For the purposes of the PRA, we estimated that the rule will result in an increase of 2100 burden hours per year. We estimate that these burden hours will cost a total of \$590,100.<sup>35</sup> We do not believe that rule 30b1-6T will impose other significant costs, especially given the nonpublic nature of the reports required under the rule.

In the 2009 Proposing Release, we requested comment on the costs and benefits of requiring money market funds to report certain portfolio holdings information to the Commission.<sup>36</sup> Commenters generally supported the proposed reporting obligation, but some expressed concerns about the costs associated with specific disclosure items, the timing and frequency of the reports (particularly in view of the amount of disclosure required), and the public availability of the reports.<sup>37</sup> We believe that these concerns are not applicable to rule 30b1-6T because the rule's reporting requirement will be triggered only on the relatively rare occasion that a fund's net asset value fell below \$.9975. In addition, the reports themselves will require less information and will remain nonpublic.

##### C. Request for Comment

We request comment on all aspects of this cost-benefit analysis. Commenters should address in particular whether rule 30b1-6T will generate the anticipated benefits or impose any other costs on money market funds or other market participants. We also request

<sup>35</sup> This estimate is based on the following calculation: 2100 hours  $\times$  \$281/hour (senior database administrator) = \$590,100. This hourly wage estimate is from the Securities Industry and Financial Markets Association Report on Management & Professional Salaries Data (Sept. 2008), modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>36</sup> See 2009 Proposing Release, *supra* note 7, at Section V.

<sup>37</sup> See, e.g., Committee of Annuity Insurers Comment Letter (Sept. 8, 2009); Data Communiqué Comment Letter (Sept. 8, 2009); The Dreyfus Corporation Comment Letter (Sept. 8, 2009); Fidelity Investments Comment Letter (Aug. 24, 2009).

<sup>32</sup> 44 U.S.C. 3501-3521.

comment as to any costs or benefits associated with rule 30b1-6T that we may not have considered here, including whether the rule will have a disproportionate effect on any particular types of fund complexes. Commenters are specifically invited to share quantified costs and benefits.

**VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation**

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.<sup>38</sup> We requested comment on whether the proposed reporting requirement, if adopted, would promote efficiency, competition, or capital formation. One commenter on the 2009 Proposing Release asserted that the extensive reporting requirements under proposed rule 30b1-6 would have an adverse effect on competition for sub-advised funds.<sup>39</sup> As noted above, however, rule 30b1-6T requires less disclosure than rule 30b1-6, which we are continuing to consider. In addition, although rule 30b1-6T requires more frequent (*i.e.*, weekly) disclosure, it applies to far fewer funds, because only funds whose market-based net asset value is less than \$.9975 would be required to submit reports. Thus, we believe that the concerns expressed by the commenter are less applicable to rule 30b1-6T.

Rule 30b1-6T is intended to facilitate oversight of money market funds that present a greater risk that they will be unable to maintain their primary investment objectives. As noted above, the nonpublic reports are designed to improve the efficiency and effectiveness of the Commission's oversight of such money market funds, which may also provide reassurance to investors, which may in turn promote capital formation. We do not believe that the rule will have any effect on competition.

**VIII. Regulatory Flexibility Act Certification**

Section 3(a) of the Regulatory Flexibility Act of 1980 ("RFA")<sup>40</sup> requires the Commission to undertake an initial regulatory flexibility analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities.<sup>41</sup> Pursuant to section 605(b) of the RFA, the Commission hereby certifies that Investment Company Act rule 30b1-6T does not have a significant impact on a substantial number of small entities.<sup>42</sup>

Rule 0-10 of the Investment Company Act defines a "small entity" for purposes of the Act as an investment company that, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. Rule 30b1-6T applies only to money market funds, and none of these funds meet the definition of a small entity under the Act.<sup>43</sup>

We solicit comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide any empirical data.

**IX. Statutory Authority**

The Commission is adopting new rule 30b1-6T pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a-8(b), 80a-29(b), 80a-30(a), and 80a-37(a)].

**List of Subjects in 17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Rule**

■ For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

<sup>40</sup> 5 U.S.C. 603(a).

<sup>41</sup> 5 U.S.C. 605(b).

<sup>42</sup> Although the requirements of the RFA do not apply to rules adopted under the APA's "good cause" exception, *see* 5 U.S.C. 601(2) (defining "rule" and notice requirement under the APA), we have nevertheless provided this certification.

<sup>43</sup> We note that we included a certification under the RFA in the 2009 Proposing Release on the grounds that none of the money market funds met the definition of a small entity under the Act, and we encouraged written comment regarding this certification. *See* 2009 Proposing Release, *supra* note 7, at Section VII. No commenters on that rulemaking have addressed the Regulatory Flexibility Act certification.

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

■ 1. The authority citation for Part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 270.30b1-6T is added to read as follows:

**§ 270.30b1-6T Weekly portfolio report for certain money market funds.**

(a) *Notice and portfolio reports.* If the market-based NAV of a money market fund on any business day ("report date") is less than 99.75 percent of the fund's stable net asset value per share or stable price per share pursuant to § 270.2a-7(c)(1) ("stable NAV"), the fund must, by electronic mail sent to the electronic address *mmfweeklyholdings@sec.gov*:

(1) Notify the Commission that its NAV is less than 99.75 percent of its stable NAV, and provide the Commission with a portfolio schedule as of the report date, promptly but in no event later than the next business day after the report date (unless the fund is currently submitting reports pursuant to this section); and

(2) Provide the Commission a portfolio schedule as of the last business day of each week, no later than the second business day of the following week, until the fund's market-based NAV as of such day is 99.75 percent of its stable NAV or greater.

(b) *Definitions.* For purposes of this section:

(1) *Market-based NAV* means a money market fund's net asset value per share calculated using available market quotations or an appropriate substitute approved by the fund's board of directors as specified in the procedures that the fund has adopted in accordance with § 270.2a-7(c)(7) or, if the fund does not value securities using the amortized cost method, the fund's current net asset value per share calculated in accordance with § 270.2a-4 (without regard to § 270.2a-7).

(2) *Money market fund* means an open-end management investment company or series thereof that is registered under the Investment Company Act and is regulated as a money market fund under § 270.2a-7.

(3) *Portfolio schedule* means a document prepared in Microsoft Excel format that contains the following information:

(i) With respect to each money market fund and class thereof,

<sup>38</sup> 15 U.S.C. 80a-2(c).

<sup>39</sup> Committee of Annuity Insurers Comment Letter (Sept. 8, 2009) ("Some of these Committee members believe that preparation of Form N-MFP on a monthly basis would place an undue burden on sub-advised underlying money market funds. This is because a number of the information items required by proposed Form N-MFP require information that typically is in the possession of the sub-adviser that actually manages the portfolio.").

(A) Name of the money market fund and class;

(B) SEC file number of the money market fund;

(C) Net asset value per share used to effect shareholder transactions;

(D) Most recent market-based net asset value (including the value of any capital support agreement);

(E) Most recent market-based net asset value (excluding the value of any capital support agreement);

(F) Date as of which the most recent market-based net asset value was calculated;

(G) Total assets of the fund;

(H) Total net assets of the fund; and

(I) Number of shares outstanding; and

(ii) With respect to each security held by the money market fund:

(A) Name of the security;

(B) CUSIP number (if any);

(C) Principal amount;

(D) Maturity date as determined under § 270.2a-7;

(E) Final maturity date, if different from the maturity date as determined under § 270.2a-7;

(F) Categorization of the security's status as a "First Tier Security," "Second Tier Security" or a security that is no longer an "Eligible Security" under § 270.2a-7;

(G) The most recent market-based price (including the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(H) The most recent market-based price (excluding the value of any capital support agreement), or appropriate substitute for such price, in which case the portfolio schedule or an exhibit to it must describe with reasonable specificity the appropriate substitute;

(I) The amortized cost value; and

(J) In the case of a tax-exempt security, whether there is a demand feature, as defined in § 270.2a-7(a)(8).

(c) *Nonpublic information.* Information provided to the Commission pursuant to this section shall be nonpublic to the extent permitted by law.

(d) *Expiration.* This section will expire on September 17, 2010.

By the Commission.

Dated: September 18, 2009

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-22900 Filed 9-18-09; 4:15 pm]

BILLING CODE 8010-01-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2008-0030]

RIN 0960-AG82

#### Authorization of Representative Fees

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are revising our rules to allow representatives, in certain instances, to charge and receive a fee from third-party entities without requiring our authorization. We are also eliminating the requirement that we authorize fees for legal guardians or court-appointed representatives who represent claimants before us if a court has already authorized the fees. We are revising our rules to reflect changes in representatives' business practices and in the ways claimants obtain representation, and to improve the efficiency of our representative fee process.

**DATES:** This final rule is effective on October 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joann S. Anderson, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-6716. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Explanation of Changes

###### Authority

We may issue regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 902(a)(5), and 1383(d)(1). We also have authority to issue regulations allowing attorneys and non-attorneys to represent claimants before us and to set the maximum fees for those services. 42 U.S.C. 406(a)(1) and 1383(d)(2). Based on this authority, we are revising our current regulations on fees paid to claimant representatives found in part 404 subpart R and part 416 subpart O.

###### Background

Generally, representatives must obtain our authorization before charging or

receiving a fee for representing claimants before us. 20 CFR 404.1720 and 416.1520. We also prohibit representatives from charging or receiving fees that are more than the amount we authorize regardless of whether the fee is charged to, or received from, the claimants or someone else. 20 CFR 404.1720(b)(3) and 416.1520(b)(3). However, if certain criteria are met, we do not need to authorize a fee if a nonprofit organization or a government agency pays the fee out of funds provided or administered by a government entity. Social Security Ruling (SSR) 85-3.

##### Changes

This final rule allows representatives, in certain cases, to be paid fees for representing claimants before us without requiring our authorization. The primary reason that we set maximum fees is to protect claimants and auxiliary beneficiaries. Nevertheless, when certain third parties are responsible for paying the representative for his or her services, there is no risk that the claimant or auxiliary beneficiaries will be charged an unreasonable fee. Third-party entities, such as insurance companies, often provide representation to claimants and pay the representatives' fees at no cost to the claimants or auxiliary beneficiaries. We do not believe that we need to authorize fee arrangements between representatives and third-party entities if claimants and auxiliary beneficiaries are not responsible for paying fees or expenses directly or indirectly.

Similarly, there is no reason to require legal guardians or court-appointed representatives to obtain our authorization for their fees if a court has already authorized the fees. In our experience, we have found court-authorized fees reasonable. Before it authorizes a fee, a court considers an individual's best interests when it reviews and approves a legal guardian's or representative's accounting. Therefore, when a court authorizes a fee, we do not need to duplicate the court's analysis.

In the notice of proposed rulemaking (NPRM) that we published on August 26, 2008, we stated that we did not need to authorize fees if "a business entity independent of your representative" paid the fees. 73 FR 50260. However, we did not define that phrase in the NPRM. For clarity and in response to public comments, we are using only the term "entity" and are defining "entity" to include "any business, firm, or other association, including but not limited to partnerships, corporations, for-profit