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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

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Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 12d1-1

SEC File No. 270-526, OMB Control No. 3235-0584

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

An investment company ("fund") is generally limited in the amount of securities the fund ("acquiring fund") can acquire from another fund ("acquired fund"). Section 12(d) of the Investment Company Act of 1940 (the "Investment Company Act" or "Act")¹ provides that a registered fund (and companies it controls) cannot:

- acquire more than three percent of another fund's securities;
- invest more than five percent of its own assets in another fund; or
- invest more than ten percent of its own assets in other funds in the aggregate.²

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund's shares to another fund if, as a result:

¹ See 15 U.S.C. 80a.

² See 15 U.S.C. 80a-12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

- the acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or
- all acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.³

Rule 12d1-1 under the Act provides an exemption from these limitations for “cash sweep” arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.⁴ An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.⁵ The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) of the Act and rule 17d-1 thereunder, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.⁶ These provisions would otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,⁷ and prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.⁸

³ See 15 U.S.C. 80a-12(d)(1)(B).

⁴ See 17 CFR 270.12d1-1.

⁵ See rule 12d1-1(b)(1).

⁶ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d); 17 CFR 270.17d-1.

⁷ An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. See 15 U.S.C. 80a-2(a)(3) (definition of “affiliated person”). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. See 15 U.S.C. 80a-2(a)(9) (definition of “control”). Not all advisers control funds they advise. The determination of

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a-7 under the Act, and undertakes to comply with all the other provisions of rule 2a-7.⁹ In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a-7, (ii) complies with sections 17(a), (d), (e), 18, and 22(e) of the Act¹⁰ as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-1(b)(9);¹¹ and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a-7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a-7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31a-1 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. The adoption of procedures by unregistered money market funds to ensure that they comply with sections 17(a), (d), (e), 18,

whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11. To the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule's exemptions from section 17(a) and rule 17d-1.

⁸ *See* 15 U.S.C. 80a-2(a)(3)(A), (B).

⁹ *See* 17 CFR 270.2a-7.

¹⁰ *See* 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d), 15 U.S.C. 80a-17(e), 15 U.S.C. 80a-18, 15 U.S.C. 80a-22(e).

¹¹ *See* 17 CFR 270.31a-1(b)(1), 17 CFR 270.31a-1(b)(2)(ii), 17 CFR 270.31a-1(b)(2)(iv), 17 CFR 270.31a-1(b)(9).

and 22(e) of the Act also constitute collections of information. By allowing funds to invest in registered and unregistered money market funds, rule 12d1-1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

The number of unregistered money market funds that are affected by rule 12d1-1 is an estimate based on the number of private liquidity funds reported on Form PF as of May 7, 2014.¹² The hour burden estimates for the condition that an unregistered money market fund comply with rule 2a-7 are based on the burden hours included in the Commission's 2013 PRA

¹² See U.S. Securities and Exchange Commission Annual Staff Report Relating to the Use of Data Collected from Private Fund Systemic Risk Reports, Appendix A, Census PF Data as of May 7, 2014, available at <http://www.sec.gov/reportspubs/special-studies/im-private-fund-annual-report-081514.pdf>. In the past, the staff has estimated the number of affected unregistered money market funds based on the latest number of exemptive applications received by the Commission that sought relief for registered funds to purchase shares in an unregistered money market fund in excess of the section 12(d)(1) limits. The staff's prior estimate of 30 affected unregistered money market funds was based on 40 exemptive applications received by the Commission in 2005 (the last full year in which the Commission received applications seeking an exemption to invest in unregistered money market funds in excess of the statutory limits) and adjusted by the percentage change in registered money market funds from 2005 to November 2011 (870 funds to 641 funds, according to the Investment Company Institute). The staff noted that this estimate may be understated because applicants generally did not identify the name or number of unregistered money market funds in which registered funds intended to invest, and each application also applies to unregistered money market funds to be organized in the future.

submission regarding rule 2a-7.¹³ The estimated average burden hours in this collection of information are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive or even representative survey or study of the burdens associated with Commission rules and forms.

In the most recent rule 2a-7 submission, Commission staff made the following estimates with respect to aggregate annual hour and cost burdens for collections of information for each existing registered money market fund:

Record of credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements:

85 responses
680 hours of professional time
Cost: \$178,160¹⁴

Public website posting of monthly portfolio information:

12 responses
7 hours of professional time
Cost: \$17,304¹⁵

¹³ See Securities and Exchange Commission, Request for OMB Approval of Extension for Approved Collection for Rule 2a-7 under the Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved Aug. 28, 2013). In connection with amendments to rule 2a-7 adopted in July 2014, the Commission also submitted a Revision of a Currently Approved Collection for Rule 2a-7, which is not yet approved. See Money Market Fund Reform, Investment Company Act Release No. 31166 (July 23, 2014) [79 FR 47736 (Aug. 14, 2014)], available at <http://www.sec.gov/rules/final/2014/33-9616.pdf>; Securities and Exchange Commission, Revision of a Currently Approved Collection (OMB Control No. 3235-0268) (pending, submitted September 4, 2014).

¹⁴ This estimate is based on the following calculation: (680 burden hours x \$262 per hour for professional time) = \$178,160 per fund.

¹⁵ This estimate is based on the following calculation: (12 x 7 burden hours x \$206 per hour for a webmaster) = \$17,304 per fund.

Review of procedures and guidelines of any investment adviser to whom the fund's board has delegated responsibility under rule 2a-7 and amendment of such procedures:

1 response
5 hours of professional and director time
Cost: \$5,960¹⁶

Based on new census data available on Form PF, the staff now believes that the number of private liquidity funds reported on Form PF (69) is a more current and accurate estimate the number of unregistered money market funds affected by rule 12d1-1.¹⁷ Each of these unregistered money market funds engages in the collections of information described above. Accordingly, the staff estimates that unregistered money market funds complying with the collections of information described above engage in a total of 6,762 annual responses under rule

¹⁶ This estimate is based on the following calculation: (1 hour x \$4,500 per hour for board time) + (4 hours x \$365 per hour for professional time) = \$5,960 per fund.

¹⁷ *See supra* note 12. The staff notes, however, that this estimate may be overstated to the extent that a private liquidity fund reported on Form PF does not follow all of rule 2a-7's requirements (that include collections of information) or because no registered investment companies invest in such a fund. The staff also notes, however, that this estimate may be understated to the extent that there are additional unregistered money market funds that are not required to be reported on Form PF (because Form PF is filed only by certain investment advisers to private funds that have \$150 million in private fund assets under management).

12d1-1,¹⁸ the aggregate annual burden hours associated with these responses is 47,748,¹⁹ and the aggregate annual cost to funds is \$13,898,256.²⁰

In the rule 2a-7 submissions, Commission staff further estimated the aggregate annual hour and cost burdens for collections of information for fund complexes with registered money market funds as follows:

Review, revise, and approve procedures concerning stress testing:

1 response
12 burden hours of professional and director time
Cost: \$8,021²¹

Report to fund boards on the results of stress testing:

5 responses
10 burden hours of professional and support staff time
Cost: \$15,490²²

¹⁸ The estimate is based on the following calculations: (69 funds x 85 responses for documentation of credit analyses and other determinations) = 5,865 responses. (69 funds x 12 responses for public website posting) = 828 responses. (69 funds x 1 response for policies and procedures related to delegation to an investment adviser) = 69 responses. 5,865 responses + 828 responses + 69 responses = 6,762 responses.

¹⁹ This estimate is based on the following calculations: (69 funds x 680 hours for documentation of credit analyses and other determinations) = 46,920 hours. (69 funds x 7 hours for public website posting) = 483 hours. (69 funds x 5 hours for policies and procedures related to delegation to an investment adviser) = 345 hours. 46,920 hours + 483 hours + 345 hours = 47,748 hours.

²⁰ This estimate is based on the following calculations: (69 funds x \$178,160) = \$12,293,040. (69 funds x \$17,304) = \$1,193,976. (69 funds x \$5,960) = \$411,240. \$12,293,040 + \$1,193,976 + \$411,240 = \$13,898,256.

²¹ This estimate is based on the following calculation: (1 hour x \$4,500 per hour for board time) + (5 hours x \$322 per hour for a portfolio manager) + (3 hours x \$259 per hour for a risk management specialist) + (3 hours x \$378 per hour for an attorney) = \$8,021 per response.

²² This estimate is based on the following calculation: (5 responses x 5 hours x \$322 per hour for a portfolio manager) + (5 responses x 2 hours x \$279 per hour for a compliance manager) + (5 responses x 2 hours x \$378 per hour for an attorney) + (5 responses x 1 hour x \$174 per hour for support staff) = \$15,490 per fund complex.

Reporting of rule 17a-9 transactions:²³

1 response
1 burden hour of legal time
Cost: \$378²⁴

Based on the number of large liquidity fund advisers reported on Form PF, the staff estimates that there are 25 fund complexes with unregistered money market funds invested in by mutual funds in excess of the statutory limits under rule 12d1-1.²⁵ Each of these fund complexes engages in the collections of information described above. Accordingly, the staff estimates that these fund complexes complying with the collections of information described above engage in a total of 175 annual responses under rule 12d1-1,²⁶ the aggregate annual burden hours associated with these responses is 575,²⁷ and the aggregate annual cost to funds is \$597,225.²⁸

In the rule 2a-7 submissions, Commission staff further estimated the aggregate annual burdens for registered money market funds that experience an event of default or insolvency as follows:

²³ See 17 CFR 270.17a-9.

²⁴ The estimate is based on the following calculations: (1 response x \$378 per hour for an attorney) = \$378 per response.

²⁵ See *supra* note 12.

²⁶ The estimate is based on the following calculations: (25 fund complexes x 1 response for revision of procedures concerning stress testing) = 25 responses. (25 fund complexes x 5 responses to provide stress testing reports) = 125 responses. (25 fund complexes x 1 response for reporting of rule 17a-9 transactions) = 25 responses. 25 responses + 125 responses + 25 responses = 175 responses.

²⁷ This estimate is based on the following calculations: (25 fund complexes x 12 hours for revision of procedures concerning stress testing) = 300 hours. (25 fund complexes x 10 hours to provide stress testing reports) = 250 hours. (25 fund complexes x 1 hour for reporting of rule 17a-9 transactions) = 25 hours. 300 hours + 250 hours + 25 hours = 575 hours.

²⁸ This estimate is based on the following calculations: (25 fund complexes x \$8,021 for revision of procedures concerning stress testing) = \$200,525. (25 fund complexes x \$15,490 to provide stress testing reports) = \$387,250. (25 fund complexes x \$378 for reporting of rule 17a-9 transactions) = \$9,450. \$200,525 + \$387,250 + \$9,450 = \$597,225.

Written record of board determinations and actions related to failure of a security to meet certain eligibility standards or an event of default of default or insolvency:

2 responses
1 burden hour of legal time
Cost: \$378

Notice to Commission of an event of default or insolvency:

1 response
0.5 burden hours of legal time
Cost: \$189

Consistent with the estimate in the rule 2a-7 submissions, Commission staff estimates that approximately 2 percent, or 1, unregistered money market fund experiences an event of default or insolvency each year. Accordingly, the staff estimates that one unregistered money market fund will comply with these collection of information requirements and engage in 3 annual responses under rule 12d1-1,²⁹ the aggregate annual burden hours associated with these responses is 1.5,³⁰ and the aggregate annual cost to funds is \$567.³¹

In the rule 2a-7 submissions, Commission staff further estimated the aggregate annual burdens for newly registered money market funds as follows:

Establish written procedures and guidelines designed to stabilize the fund's net asset value and establish procedures for board delegation of authority:

1 response
15.5 hours of director, legal, and support staff time
Cost: \$6,328³²

²⁹ The estimate is based on the following calculations: (1 fund x 2 responses) + (1 fund x 1 response) = 3 responses.

³⁰ This estimate is based on the following calculations: (1 fund x 1 hour) + (1 fund x 0.5 hours) = 1.5 hours.

³¹ This estimate is based on the following calculations: (1 fund x \$378) + (1 fund x \$189) = \$567.

³² This estimate is based on the following calculation: (0.5 hours x \$4,500 per hour for board time) + (7.2 hours x \$378 per hour for an attorney) + (7.8 hours x \$174 per hour for support staff) = \$6,328 per response.

Adopt procedures concerning stress testing:

1 response per fund complex
22 burden hours of professional and director time per fund complex
Cost: \$19,373 per fund complex³³

Commission staff estimates that the proportion of unregistered money market funds that intend to newly undertake the collection of information burdens of rule 2a-7 will be similar to the proportion of money market funds that are newly registered. Based on a projection of 10 new money market funds per year (in the most recent rule 2a-7 submission), the staff estimates that, similarly, there will be 10 new unregistered money market funds that undertake the above burden to establish written procedures and guidelines designed to stabilize the fund's net asset value and establish procedures for board delegation of authority.³⁴ Accordingly, the staff estimates that 10 unregistered money market funds will comply with this collection of information requirement and engage in 10 annual responses under rule 12d1-1,³⁵ the aggregate annual burden hours associated with these responses is 155,³⁶ and the aggregate annual cost to funds is \$62,380.³⁷

Accordingly, the estimated total number of annual responses under rule 12d1-1 for the collections of information described in the rule 2a-7 submissions is 6,950, the aggregate annual

³³ This estimate is based on the following calculation: (3 hours x \$4,500 per hour for board time) + (8 hours x \$378 per hour for an attorney) + (11 hours x \$259 per hour for a risk management specialist) = \$19,373 per response. *See also infra* note 34.

³⁴ The staff's estimate is based on historical data provided in Lipper Inc.'s LANA database and projections about the growth of the money market mutual fund industry going forward. The actual number of new money market funds launched may vary significantly from our estimates depending upon developments in market interest rates and reactions to recent amendments adopted to money market funds in July 2014. The staff does not estimate any new fund complexes being launched in the next year.

³⁵ The estimate is based on the following calculations: (10 funds x 1 response) = 10 responses.

³⁶ This estimate is based on the following calculations: (10 funds x 15.5 hours) = 155 hours.

³⁷ This estimate is based on the following calculations: (10 funds x \$6,238) = \$62,380.

burden hours associated with these responses is 48,479.5, and the aggregate cost to funds is \$14,558,428.³⁸

Rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-1(b)(9) require registered funds to keep certain records, which include journals and general and auxiliary ledgers, including ledgers for each portfolio security and each shareholder of record of the fund. Most of the records required to be maintained by the rule are the type that generally would be maintained as a matter of good business practice and to prepare the unregistered money market fund's financial statements. Accordingly, Commission staff estimates that the requirements under rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-1(b)(9) would not impose any additional burden because the costs of maintaining these records would be incurred by unregistered money market funds in any case to keep books and records that are necessary to prepare financial statements for shareholders, to prepare the fund's annual income tax returns, and as a normal business custom.

Rule 12d1-1 also requires unregistered money market funds in which registered funds invest to adopt procedures designed to ensure that the unregistered money market funds comply with sections 17(a), (d), (e), and 22(e) of the Act. This is a one-time collection of information requirement that applies to unregistered money market funds that intend to comply with the requirements of rule 12d1-1. As discussed above, based on a projection of 10 new money market funds per year, the staff estimates that, similarly, there will be 10 new unregistered money market funds that undertake the above burden to establish written procedures and

³⁸ These estimates are based upon the following calculations: $(6,762 + 175 + 3 + 10) = 6,950$ annual responses; $(47,748 + 575 + 1.5 + 155) = 48,479.5$ burden hours; and $(\$13,898,256 + \$597,225 + \$567 + \$62,380) = \$14,558,428$.

guidelines designed to ensure that the unregistered money market funds comply with sections 17(a), (d), (e), and 22(e) of the Act. The staff estimates the burden as follows:

Establish written procedures and guidelines designed to ensure that the unregistered money market funds comply with sections 17(a), (d), (e), and 22(e) of the Act:

1 response
15.5 hours of director, legal, and support staff time
Cost: \$6,328³⁹

Accordingly, the staff estimates that 10 unregistered money market funds will comply with this collection of information requirement and engage in 10 annual responses under rule 12d1-1,⁴⁰ the aggregate annual burden hours associated with these responses is 155,⁴¹ and the aggregate annual cost to funds is \$62,380.⁴²

Commission staff also estimates that unregistered money market funds will incur costs to preserve records, as required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In the rule 2a-7 submissions, Commission staff estimated that the amount an individual money market fund may spend ranges from \$100 per year to \$300,000. We have no reason to believe the range is different for unregistered money market funds. Based on Form PF data as of May 7, 2014, private liquidity funds have \$257

³⁹ This estimate is based on the following calculation: (0.5 hours x \$4,500 per hour for board time) + (7.2 hours x \$378 per hour for an attorney) + (7.8 hours x \$174 per hour for support staff) = \$6,328 per response.

⁴⁰ The estimate is based on the following calculations: (10 funds x 1 response) = 10 responses.

⁴¹ This estimate is based on the following calculations: (10 funds x 15.5 hours) = 155 hours.

⁴² This estimate is based on the following calculations: (10 funds x \$6,238) = \$62,380.

billion in regulatory assets under management.⁴³ The Commission does not have specific information about the proportion of assets held in small, medium-sized, or large unregistered money market funds. Because private liquidity funds are often used as cash management vehicles, the staff estimates that each private liquidity fund is a “large” fund (*i.e.*, more than \$1 billion in assets under management). Based on a cost of \$0.0000009 per dollar of assets under management (for large funds),⁴⁴ the staff estimates compliance with rule 2-7 for these unregistered money market funds totals \$231,300 annually.⁴⁵

Consistent with estimates made in the rule 2a-7 submissions, Commission staff estimates that unregistered money market funds also incur capital costs to create computer programs for maintaining and preserving compliance records for rule 2a-7 of \$0.0000132 per dollar of assets under management. Based on the assets under management figures described above, staff estimates annual capital costs for all unregistered money market funds of \$3.39 million.⁴⁶ Commission staff further estimates that, even absent the requirements of rule 2a-7, money market funds would spend at least half of the amounts described above for record preservation (\$115,650) and for capital costs (\$1.7 million). Commission staff concludes that the aggregate annual costs of compliance with the rule are \$115,650 for record preservation and \$1.7 million for capital costs.

⁴³ See *supra* note 12.

⁴⁴ The recordkeeping cost estimates are \$0.0051295 per dollar of assets under management for small funds, and \$0.0005041 per dollar of assets under management for medium-sized funds. The cost estimates are the same as those used in the most recently approved rule 2a-7 submission.

⁴⁵ This estimate is based on the following calculation: (\$257 billion x \$0.0000009) = \$231,300 billion for small funds.

⁴⁶ This estimate is based on the following calculation: (\$257 billion x 0.0000132) = \$3.39 million.

The collections of information required for unregistered money market funds by rule 12d1-1 are necessary in order for acquiring funds to be able to obtain the benefits described above. Notices to the Commission will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street, NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: January 16, 2015.

Brent J. Fields,
Secretary.

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