

CLIENT ALERT

# SEC Proposes Amendments to Money Market Fund Rules

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On December 15, 2021, the Securities and Exchange Commission (the “SEC”) voted 3-2 to propose amendments to Rule 2a-7 (the rule governing money market funds) and other rules under the Investment Company Act of 1940 (the “1940 Act”), as well as related reporting and disclosure requirements.<sup>1</sup> The proposed amendments are the latest chapter in the SEC’s history of money market fund reform and are intended by the SEC, in part, to address concerns about prime and tax-exempt money market funds that were highlighted by market events that occurred in March 2020 at the beginning of the COVID-19 pandemic.<sup>2</sup> Comments on the proposed amendments may be submitted until 60 days following the publication of the Proposing Release in the Federal Register.

If adopted, the proposed amendments would:

- Eliminate the liquidity fee and redemption gate provisions of Rule 2a-7;
- Require institutional prime and institutional tax-exempt money market funds to implement swing pricing policies and procedures to adjust a fund’s current net asset value (“NAV”) per share by a swing factor when the fund has net redemptions;

<sup>1</sup> See Money Market Fund Reforms, 1940 Act Release No. 34441 (Dec. 15, 2021), [here](#) (“Proposing Release”).

<sup>2</sup> See SEC Proposes Amendments to Money Market Fund Rules, SEC Press Release No. 2021-258 (Dec. 15, 2021), [here](#).

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- Increase the minimum daily liquid asset and weekly liquid asset requirements from 10% and 30% to 25% and 50%, respectively;
- Expand government and retail money market funds' obligations to confirm that they can fulfill shareholder transactions if they convert to a "floating" share price (e.g., in the event of a negative interest rate environment);
- Specify how money market funds calculate weighted average maturity and weighted average life; and
- Amend certain disclosure requirements on Forms N-CR, N-MFP and N-1A.

### Background

The SEC adopted Rule 2a-7 in 1983 and has amended the rule several times over the years, including after the events of the 2008 financial crisis.<sup>3</sup> In 2010, the SEC adopted amendments to Rule 2a-7 that, among other things, required money market funds to maintain liquidity buffers in the form of specified minimum levels of daily liquid assets and weekly liquid assets and further limited the average maturity of a fund's portfolio.<sup>4</sup> In 2014, the SEC amended Rule 2a-7 to provide boards of non-government money market funds (*i.e.*, prime and tax-exempt money market funds)<sup>5</sup> with the ability to impose liquidity fees and/or redemption gates in the event a fund's weekly liquid assets fall below 30%.<sup>6</sup> The 2014 amendments also required institutional prime and institutional tax-exempt money market funds to "float" their NAVs (*i.e.*, not fix the NAVs at \$1.00 per share).<sup>7</sup>

In March 2020, institutional prime and tax-exempt money market funds experienced large outflows, which contributed to stress on short-term funding markets.<sup>8</sup> The outflows significantly slowed following intervention by the Federal Reserve and the U.S. Treasury, which established the Money Market Mutual Fund Liquidity Facility and other programs to support

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<sup>3</sup> See Proposing Release, at 9-12; Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), 1940 Act Release No. 13380 (July 18, 1983), [here](#).

<sup>4</sup> See Money Market Fund Reform, 1940 Act Release No. 29132 (Mar. 4, 2010), [here](#).

<sup>5</sup> Prime money market funds hold a variety of taxable short-term obligations issued by corporations and banks, as well as repurchase agreements and asset-backed commercial paper. Tax-exempt money market funds primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from federal income tax for individual taxpayers. Government money market funds hold obligations of the U.S. Government, including obligations of the U.S. Treasury and Federal agencies and instrumentalities, as well as repurchase agreements collateralized by government securities. See Proposing Release, at 7-8.

<sup>6</sup> See Money Market Fund Reform; Amendments to Form PF, 1940 Act Release No. 31166 (Aug. 14, 2014), [here](#).

<sup>7</sup> Within the prime and tax-exempt money market fund categories, some funds are "retail" funds and others are "institutional" funds. Retail money market funds are held only by natural persons, and institutional funds can be held by a wider range of investors, such as corporations, small businesses, and retirement plans. See Proposing Release, at 8.

<sup>8</sup> See *id.* at 14-26.

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short-term funding markets.<sup>9</sup> The President's Working Group on Financial Markets issued a report discussing these events and several potential money market fund reform options in December 2020 (the "PWG Report").<sup>10</sup> The SEC subsequently issued a request for comment on the various reforms discussed in the PWG Report,<sup>11</sup> and has now proposed rule amendments based on those comments and potential reform options.

### Elimination of Liquidity Fee and Redemption Gate Provisions

Rule 2a-7 currently provides that a money market fund may institute a liquidity fee of up to 2% or temporarily suspend redemptions (*i.e.*, impose a "gate") for up to 10 business days in a 90-day period, if the fund's weekly liquid assets fall below 30% and the fund's board of directors determines that imposing a fee or gate is in the fund's best interests.<sup>12</sup> The current Rule 2a-7 also requires the imposition of a liquidity fee of 1% if a non-government money market fund's weekly liquid assets fall below 10%, unless the board determines that a fee would not be in the best interests of the fund.<sup>13</sup> The SEC has proposed removing the liquidity fee and redemption gate provisions from Rule 2a-7.<sup>14</sup>

Even if the amendments are adopted as proposed, a money market fund's board of directors would continue to be able to approve the fund's use of a redemption fee (up to but not exceeding 2% of the value of shares redeemed) to eliminate or reduce so far as practicable dilution of the value of the fund's outstanding securities pursuant to Rule 22c-2 under the

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<sup>9</sup> See Federal Reserve and U.S. Treasury Seek to Bolster Money Market Funds (Mar. 23, 2020), [here](#).

<sup>10</sup> See Report of the President's Working Group on Financial Markets, Overview of Recent Events and Potential Reform Options for Money Market Funds (Dec. 2020), <https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf>.

<sup>11</sup> See Request for Comment on Potential Money Market Fund Reform Measures in President's Working Group Report, 1940 Act Release No. 34188 (Feb. 10, 2021), [here](#).

<sup>12</sup> Rule 2a-7(c)(2)(i).

<sup>13</sup> Rule 2a-7(c)(2)(ii).

<sup>14</sup> Proposing Release, at 28-31. SEC Commissioner Peirce, who issued a dissenting statement to the proposed amendments, supported eliminating the link between a liquidity threshold and fees and gates, but objected to "limit[ing] funds' ability to use these tools as they deem appropriate." See Commissioner Hester M. Peirce, Statement on Money Market Fund Reforms (Dec. 15 2021), [here](#). SEC Commissioner Roisman, who also issued a dissenting statement to the proposed amendments, supported the elimination of the requirement that boards consider gates if weekly liquid assets in a fund fall below the required threshold, but questioned whether to prohibit the use of gates altogether or eliminate the current requirement for boards to consider imposing liquidity fees when a fund's liquidity drops. See Commissioner Elad R. Roisman, Statement on Proposed Money Market Fund Reforms (Dec. 15, 2021), [here](#).

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1940 Act.<sup>15</sup> Similarly, a money market fund would continue to be able to suspend redemptions to facilitate an orderly liquidation of the fund pursuant to Rule 22e-3 under the 1940 Act.<sup>16</sup>

### Swing Pricing Requirement

Swing pricing is a process of adjusting a fund's current NAV such that the transaction price effectively passes on costs stemming from shareholder redemptions to redeeming shareholders.<sup>17</sup> The SEC has proposed a swing pricing requirement for institutional prime and tax-exempt money market funds that would apply when a fund experiences net redemptions.<sup>18</sup> The SEC stated that this requirement is designed to ensure that costs stemming from net redemptions are fairly allocated and do not give rise to a first-mover advantage or dilution under either normal or stressed market conditions.<sup>19</sup>

The SEC noted in the Proposing Release that the implementation of swing pricing may present operational issues (including the ability to settle on a T+0 basis and the ability to determine net shareholder flows in time to apply a swing factor to NAV, as needed).<sup>20</sup> Commissioner Peirce, in her dissenting statement, questioned whether the proposed version of swing pricing would succeed in altering investor decision making.<sup>21</sup> Commissioner Roisman expressed reservations about requiring all institutional non-government money market funds to use a uniform approach to charge fees to redeeming investors, including the proposed swing pricing framework.<sup>22</sup>

As proposed, an institutional prime or tax-exempt money market fund would be required to adopt swing pricing policies and procedures to adjust the fund's current NAV per share by a "swing factor" if the fund has net redemptions for the

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<sup>15</sup> Proposing Release, at 39; see Rule 22c-2 (providing that an open-end fund may impose a redemption fee, not to exceed 2% of the value of the shares redeemed, upon the determination by the fund's board of directors that such fee is "necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund").

<sup>16</sup> Proposing Release, at 32; see Rule 22e-3 (which generally allows a money market fund to suspend redemptions if, among other conditions, (1) the fund, at the end of a business day, has invested less than 10% of its total assets in weekly liquid assets or, in the case of a government or retail money market fund, the fund's price per share has deviated from its stable price or the fund's board determines that such a deviation is likely to occur, and (2) the fund's board has approved the fund's liquidation).

<sup>17</sup> *Id.* at 45.

<sup>18</sup> Proposing Release, at 44. The SEC did not propose to require retail money market funds to implement swing pricing because such funds historically have had smaller outflows than institutional funds during times of market stress. *Id.* at 61.

<sup>19</sup> *Id.* at 44.

<sup>20</sup> See *id.* at 73-79.

<sup>21</sup> See Commissioner Hester M. Peirce, Statement on Money Market Fund Reforms, *supra* note 14.

<sup>22</sup> See Commissioner Elad R. Roisman, Statement on Proposed Money Market Fund Reforms, *supra* note 14.

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“pricing period.”<sup>23</sup> The “pricing period” would be defined, in substance, to mean the period of time in which an order to purchase or sell securities issued by the fund must be received to be priced at the next computed NAV.<sup>24</sup> This is designed to address money market funds that compute their NAVs multiple times per day.<sup>25</sup>

*Swing Factor.* The swing factor would vary depending on the size of net redemptions for the pricing period. If the fund has net redemptions in any amount, the swing factor would need to reflect the spread costs and other transaction costs (*i.e.*, brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio security sales), as applicable, from selling a pro rata amount of each security in the fund’s portfolio to meet those net redemptions.<sup>26</sup> If net redemptions exceed the “market impact threshold,” the fund’s swing factor also would include good faith estimates of market impact costs from selling a pro rata amount of each security in the fund’s portfolio to meet net redemptions for the pricing period. The “market impact threshold” would be defined as an amount of net redemptions for a pricing period that equals the value of four percent of the fund’s NAV divided by the number of pricing periods the fund has in a business day, or such smaller amount of net redemptions as determined by the swing pricing administrator (as defined below).<sup>27</sup> The SEC did not propose an upper limit on a fund’s swing factor.<sup>28</sup>

*Estimation of Market Impact Costs.* The fund would estimate market impacts for each security in its portfolio by first estimating the “market impact factor.”<sup>29</sup> This factor is an estimate of the percentage change in the value of the security if it were sold, per dollar of the amount of the security that would be sold, under current market conditions. Then, the fund would multiply the market impact factor by the dollar amount of the security that would be sold if the fund sold a pro rata amount of each security in its portfolio to meet the net redemptions for the pricing period.<sup>30</sup> The proposal would permit the swing pricing administrator to estimate costs and market impact factors for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type rather than analyze each security separately.<sup>31</sup>

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<sup>23</sup> *Id.* at 46; see proposed Rule 2a-7(c)(2)(ii)(A). An institutional fund with multiple share classes must determine whether it experienced net redemption activity across all share classes in the aggregate, rather than determining net redemption activity on a class-by-class basis. Proposing Release, at 47. A fund with multiple share classes must use the same swing factor for each share class. *Id.* at 53.

<sup>24</sup> Proposing Release, at 46.

<sup>25</sup> *Id.* at 46.

<sup>26</sup> See proposed Rule 2a-7(c)(2)(iii)(A) and (B).

<sup>27</sup> See proposed Rule 2a-7(c)(2)(vi)(B).

<sup>28</sup> Proposing Release, at 53.

<sup>29</sup> See proposed Rule 2a-7(c)(2)(iii)(B)(1).

<sup>30</sup> See proposed Rule 2a-7(c)(2)(iii)(B)(2).

<sup>31</sup> See proposed Rule 2a-7(c)(2)(iii)(C).

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*Administration and Oversight of Swing Pricing.* A money market fund's swing pricing policies and procedures would need to be implemented by a board-designated administrator (the "swing pricing administrator").<sup>32</sup> The swing pricing administrator would be defined to mean the fund's investment adviser, officer, or officers responsible for administering the swing pricing policies and procedures and could consist of a group of persons.<sup>33</sup> The administration of the swing pricing program would need to be reasonably segregated from portfolio management of the fund and would not be permitted to include portfolio managers.<sup>34</sup>

The SEC proposed additional requirements for board oversight of swing pricing. A fund's board, including a majority of directors who are not interested persons of the fund, would be required to: (i) approve the fund's swing pricing policies and procedures; (ii) designate the swing pricing administrator; and (iii) review, no less frequently than annually, a written report prepared by the swing pricing administrator describing the adequacy and effectiveness of the program.<sup>35</sup> A fund would be required to maintain a written copy of the reports provided by the swing pricing administrator to the board for six years, the first two years in an easily accessible place.<sup>36</sup>

### Increased Portfolio Liquidity Requirements

Currently, Rule 2a-7 requires that immediately after acquisition of an asset, a money market fund must hold at least 10% of its total assets in daily liquid assets (the "daily liquidity minimum") and at least 30% of its total assets in weekly liquid assets (the "weekly liquidity minimum").<sup>37</sup> Assets that make up daily liquid assets and weekly liquid assets are cash or

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<sup>32</sup> See proposed Rule 2a-7(c)(2)(iv)(B).

<sup>33</sup> See proposed Rule 2a-7(c)(2)(vi)(E).

<sup>34</sup> See proposed Rule 2a-7(c)(2)(iv)(B).

<sup>35</sup> See proposed Rule 2a-7(c)(2)(iv)(A) through (C). A money market fund's board also would not be permitted to delegate these responsibilities. See proposed Rule 2a-7(j). The swing pricing administrator's report to the board would be required to describe: (i) the administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation; (ii) any material changes to the fund's swing pricing policies and procedures since the date of the last report; and (iii) the administrator's review and assessment of the fund's swing factors and market impact threshold, including the information and data supporting the determination of the swing factors and the swing pricing administrator's determination to use a smaller market impact threshold, if applicable. See proposed Rule 2a-7(c)(2)(iv)(C)(1) through (3). The SEC noted in the Proposing Release that the report must include a description of the impact of the swing pricing program on eliminating or reducing liquidity costs associated with satisfying shareholder redemptions, as well as the information and data that support the administrator's determination of the fund's swing factor each day. See Proposing Release, at n.134.

<sup>36</sup> See proposed Rule 2a-7(h)(8). Existing recordkeeping requirements applicable to all money market fund procedures would require a fund to maintain its swing pricing policies and procedures for six years, the first two years in an easily accessible place. See Rule 2a-7(h)(1).

<sup>37</sup> Rule 2a-7(d)(4)(ii) and (iii).

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securities that can readily be converted to cash within one business day or five business days, respectively.<sup>38</sup> The SEC has proposed increasing the daily liquidity minimum to 25% and the weekly liquidity minimum to 50%.<sup>39</sup>

The SEC also proposed requirements regarding the consequences of falling below the daily and weekly liquidity minimums. The SEC proposed to maintain the existing regulatory requirement that if a money market fund's portfolio does not meet one of the liquidity minimums, the fund may not acquire any assets other than daily liquid assets or weekly liquid assets, as applicable, until it meets such liquidity minimum.<sup>40</sup> In addition, the SEC proposed to require a fund to notify its board of directors when the fund has invested less than 12.5% of its total assets in daily liquid assets or less than 25% of its total assets in weekly liquid assets (a "liquidity threshold event").<sup>41</sup> The notification would be required to be made within one business day of the liquidity threshold event.<sup>42</sup> The proposed rule would also require the fund to provide the board with a brief description of the facts and circumstances that led to the liquidity threshold event within four business days after its occurrence.<sup>43</sup>

Under current Rule 2a-7, a money market fund is required to engage in periodic stress testing, including stress testing its ability to maintain at least 10% of its total net assets invested in weekly liquid assets under specified hypothetical events.<sup>44</sup> The 10% threshold was chosen because dropping below it requires a default liquidity fee under current Rule 2a-7. Given the proposed amendments to Rule 2a-7 discussed above, the proposal would require funds to test whether they are able to maintain "sufficient minimum liquidity" under such specified hypothetical events when engaging in the periodic stress testing required by Rule 2a-7.<sup>45</sup> As a result, the SEC explained in the Proposing Release, each fund would be required to determine the minimum level of liquidity it seeks to maintain during stress periods and identify that liquidity level in its written stress testing procedures.<sup>46</sup>

### Amendments Related to Potential Negative Interest Rates

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<sup>38</sup> See Rule 2a-7(a)(8) and (28).

<sup>39</sup> See proposed Rule 2a-7(d)(4)(ii) and (iii). Commissioner Roisman questioned the proposed increases to the daily and weekly liquidity minimums for all money market funds. See Commissioner Roisman, Statement on Money Market Fund Reforms, *supra* note 14. With the exception of tax-exempt money market funds, which will continue to be exempt from the daily liquidity minimum, the proposal does not establish different liquidity minimums by type of fund. Proposing Release, at 95.

<sup>40</sup> Proposing Release, at 102-03.

<sup>41</sup> See proposed Rule 2a-7(f)(4)(i).

<sup>42</sup> See *id.*

<sup>43</sup> See proposed Rule 2a-7(f)(4)(ii).

<sup>44</sup> See Rule 2a-7(g)(8).

<sup>45</sup> See proposed Rule 2a-7(g)(8)(i) and (g)(8)(ii)(A).

<sup>46</sup> See Proposing Release, at 106.

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Rule 2a-7 at present does not explicitly address how money market funds must operate when interest rates are negative. The SEC explained in the Proposing Release, however, that a fund would need to convert from a stable share price to a floating share price under Rule 2a-7 in the event that the fund's board of directors believes the stable share price does not fairly reflect the market-based price per share, such as if negative interest rates turn a stable NAV fund's gross yield negative.<sup>47</sup> The SEC proposed to expand government and retail money market funds' obligations under Rule 2a-7 to confirm that they can fulfill shareholder transactions if they convert to a floating share price.<sup>48</sup> In particular, amended Rule 2a-7 would require a government or retail money market fund (or the fund's principal underwriter or transfer agent on its behalf) to determine that financial intermediaries that submit purchase or redemption orders—including through an agent—have the capacity to redeem and sell the fund's shares at prices that do not correspond to a stable price per share or, if this determination cannot be made, to prohibit the relevant financial intermediaries from purchasing the fund's shares in nominee name.<sup>49</sup> Funds would have flexibility in how they make this determination for each financial intermediary, but would be required to maintain records identifying the intermediaries the fund has determined have the capacity to transact at non-stable share prices and the intermediaries for which the fund was unable to make this determination.<sup>50</sup>

### Amendments to Specify the Calculation of Weighted Average Maturity and Weighted Average Life

The SEC noted that funds use different approaches when calculating weighted average maturity ("WAM") and weighted average life ("WAL") of their portfolios under the current requirements of Rule 2a-7.<sup>51</sup> Since this discrepancy can create inconsistency of WAM and WAL calculations across funds, including in data reported to the SEC and provided on fund websites, amended Rule 2a-7 would specify the calculations of WAM and WAL.<sup>52</sup>

### Amended Reporting and Disclosure Requirements

*Form N-CR Amendments.* The SEC proposed to add a new requirement for a money market fund to file a report within one business day on Form N-CR when a liquidity threshold event occurs.<sup>53</sup> The SEC also proposed to require funds to file

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<sup>47</sup> *Id.* at 109-10.

<sup>48</sup> *Id.* at 110-11.

<sup>49</sup> See proposed Rule 2a-7(h)(11)(ii).

<sup>50</sup> See proposed Rule 2a-7(h)(11)(iii). Funds would be required to preserve a written copy of such records for a period of not less than six years following each identification of a financial intermediary, the first two years in an easily accessible place.

<sup>51</sup> Proposing Release, at 117.

<sup>52</sup> See proposed Rule 2a-7(d)(1)(ii) and (iii).

<sup>53</sup> See proposed Part E and proposed Instruction to Part E of Form N-CR. When reporting a liquidity threshold event, the fund's report on Form N-CR would be required to include: (i) the initial date on which the fund falls below either the 12.5% daily liquid asset threshold or the 25% weekly liquid asset threshold; (ii) the percentage of the fund's total assets invested in both daily liquid assets and weekly liquid assets on the initial date of a liquidity threshold event; and (iii) a brief description of the facts and circumstances leading to the liquidity threshold event. Under the proposal, a



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Form N-CR reports in a custom XML-based structured data language instead of HTML or ASCII.<sup>54</sup> The SEC proposed certain additional amendments to Form N-CR, including to remove reporting requirements related to the imposition of liquidity fees and redemption gates under Rule 2a-7.<sup>55</sup>

*Form N-MFP Amendments.* The SEC proposed amending Form N-MFP to require additional information about the composition and concentration of money market fund shareholders.<sup>56</sup> The SEC also proposed a requirement for prime money market funds to disclose on Form N-MFP the amount of portfolio securities sold or disposed of during the reporting period.<sup>57</sup> In addition, the SEC proposed several changes to Form N-MFP regarding reporting of portfolio securities and other information.<sup>58</sup> Further, the SEC proposed to require money market funds that are not government funds or retail funds to report on Form N-MFP the number of times the fund applied a swing factor over the course of the reporting period, and each swing factor applied.<sup>59</sup>

*Additional Disclosure Requirements Relating to Swing Pricing.* The SEC also proposed additional disclosure requirements regarding the proposed swing pricing requirement. The website disclosure provision in Rule 2a-7 is proposed to be amended to require money market funds that are not government funds or retail funds to depict their adjusted NAV, taking into account the application of any swing factor used by a fund.<sup>60</sup> Finally, money market funds subject to the proposed swing pricing requirement would be required to comply with the existing swing pricing-related requirements of Form N-1A.<sup>61</sup>

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fund could file an amended report providing the required brief description of the facts and circumstances leading to the liquidity threshold event up to four business days after such event.

<sup>54</sup> Proposing Release, at 123-25.

<sup>55</sup> *Id.* at 126-27.

<sup>56</sup> See proposed Items B.10 and B.11 of Form N-MFP.

<sup>57</sup> See Item D.1 of proposed Form N-MFP.

<sup>58</sup> See Proposing Release, at 133-45. The proposed changes to Form N-MFP include requiring, for example, daily liquidity, NAV, and flow data in publicly available reports. See *id.*

<sup>59</sup> See proposed Item A.22 of Form N-MFP.

<sup>60</sup> See proposed Rule 2a-7(h)(10)(iii).

<sup>61</sup> Proposing Release, at 83. Specifically, the form requires a fund to include a general description of the effects of swing pricing on the fund's annual total returns as a footnote to its risk/return bar chart and table. See Items 4(b)(2)(ii) and (iv) of Form N-1A. Form N-1A also requires a fund that uses swing pricing to explain the fund's use of swing pricing, including its meaning, the circumstances under which the fund will use it, and the effects of swing pricing on the fund and investors. See Item 6(d) of Form N-1A.

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