TREASURY DEPARTMENT CREATES TEMPORARY GUARANTEE PROGRAM FOR MONEY MARKET FUNDS

The Treasury Department recently issued details concerning a temporary guarantee program for money market funds (the "Program") that would be funded through the Exchange Stabilization Fund.[1] The Program provides coverage to certain shareholders of a money market fund that (1) is publicly offered, (2) is registered under the Investment Company Act of 1940 (the "1940 Act") and is regulated pursuant to Rule 2a-7 under the 1940 Act, (3) has a policy of maintaining a stable share price of $1.00, and (4) elects to participate in the Program. Eligible funds that wish to participate in the Program must enroll by October 8, 2008. Eligibility under the Program extends to taxable and tax exempt money market funds that meet the stated criteria. The Program only protects shareholders' accounts that were in existence on September 19, 2008, as discussed below.

The Program's guarantee will be triggered if a participating fund's market value based net asset value falls below $0.995, commonly referred to as "breaking the buck" (a "Guarantee Event"), unless promptly cured, provided that the fund liquidates promptly after the Guarantee Event. The coverage provided to any fund is subject to the overall amount available under the Program.

The Program guarantees a $1.00 share price for the number of shares owned by a shareholder in any participating money market fund as of the close of business on September 19, 2008. The value attributed to an increase in the number of shares owned by a shareholder after the close of business on September 19, 2008, will not be guaranteed. If the number of shares owned by a shareholder fluctuates over the period of the Program, the shareholder will be covered for the lesser of the number of shares owned as of the close of business on September 19, 2008, or the number of shares owned as of the Guarantee Event. This means that if an investor sells shares in a covered money market fund after September 19, 2008, and that fund subsequently "breaks the buck," the Program will compensate the investor only for the lesser number of shares owned.

To participate in the Program, money market funds with a market value based net asset value per share greater than or equal to $0.9975 as of the close of business on September 19, 2008, must pay a nonrefundable up front fee of 0.01 percent, 1 basis point, based on the number of shares

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1 The Exchange Stabilization Fund was established by the Gold Reserve Act of 1934, as amended, and has approximately $50 billion in assets. This Act authorizes the Secretary of the Treasury, with the approval of the President, "to deal in gold, foreign exchange, and other instruments of credit and securities" consistent with the obligations of the U.S. government in the International Monetary Fund to promote international financial stability. More information on the Exchange Stabilization Fund can be found at http://www.treas.gov/offices/international-affairs/esf/. The amount of any guarantee payment under the Program is dependent on the availability of funds in the Exchange Stabilization Fund. Discussions concerning providing additional funding to the Exchange Stabilization Fund are currently underway in the Congress but no determination has been made as of this date.

outstanding on that date. Money market funds with a market value based net asset value per share of greater than or equal to $0.995 and below $0.9975 as of the close of business on September 19, 2008, will be required to pay a nonrefundable up front fee of 0.015 percent, 1.5 basis points, based on the number of shares outstanding on that date. Money market funds with a market value based net asset value below $0.995 as of the close of business on September 19, 2008, are not eligible to participate in the Program. The Program and the guarantee provided initially expire on December 18, 2008, but the Treasury Department may choose to extend the Program until September 18, 2009. The participation fees described above will cover only the first three months of participation in the Program. If the Program is extended beyond its initial time frame, money market funds will have to renew their participation in the Program after each extension in order to maintain the guarantee. To be eligible to participate in the extension of the Program, a participating fund must have a net asset value of at least $0.995 on the extension date.

The Program applies to participating funds on a fund-by-fund basis, and the performance of one fund in a fund complex will not affect the guarantee of a different participating fund in the same complex.

The Program is voluntary, and a fund's board of directors should consider relevant factors in determining whether to participate in the Program, including the portfolio exposure of the fund, support provided by the fund sponsor, if any, the cost of the Program, relevant market conditions, the potential impact on the stability of the fund's assets and implementation issues.

The form of guarantee agreement for participating money market funds imposes a number of requirements, including the following:

- Participating money market funds must represent that they are managed in a manner that is designed to reduce the likelihood that a Guarantee Event under the Program will occur.
- Participating money market funds must comply with Rule 2a-7 under the 1940 Act at all times.
- If a Guarantee Event occurs, the fund must promptly demand payment of all amounts due to the fund from any person who has agreed to make a capital contribution or other payment to the fund pursuant to any agreement to facilitate the maintenance of a stable net asset value or share price (a "NAV Support Agreement"). In effect, this means that any other credit support must be used first.
- Participating money market funds must agree that they will not terminate any NAV Support Agreement unless it is replaced with a new NAV Support Agreement approved by the Treasury Department, will renew any such agreement subject to an extension, and will use their "best efforts" to obtain NAV Support Agreements as may be necessary and appropriate (taking into account the expenses that the fund would incur) to facilitate the maintenance of their $1.00 share price.
- If a Guarantee Event occurs, the fund must be liquidated in an orderly manner. Specifically, after a Guarantee Event, the fund must provide notice to the Treasury

Department on the next business day, initiate liquidation of the fund within five business days, cease the declaration and payment of dividends, cease issuing new shares, suspend redemptions and complete liquidation of the fund within 30 days, unless the Treasury Department consents to a later date.

- Participating money market funds assign to the Treasury Department all rights to claims, demands, lawsuits and judgments with respect to the fund's business, ownership or use or value of any asset, including, but not limited to, any rights against the fund's investment adviser for malfeasance, breach of contract, breach of fiduciary duty or any other claim, to the extent of any guarantee payment under the Program.
- Participating money market funds must consent to the appointment of any receiver, liquidation trustee or similar official designated by the Treasury Department or the Securities and Exchange Commission to administer and oversee the liquidation of the fund.
- The Treasury Department is not obligated to pay a guarantee to any money market fund participating in the Program if the Treasury Department, in its sole and absolute discretion, determines that any of the representations and warranties made by a fund or its investment adviser under the guarantee agreement and its related acknowledgements and extensions, or under any other notice delivered or any information provided under the guarantee agreement, was incorrect when made.

More information, including additional conditions of the Program and the forms of guarantee agreements and related documents, may be found at the Treasury Department's website at:

http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-fund.shtml.

Additional clarification, including details on operational matters, is expected from the Investment Company Institute and the staff of the Securities and Exchange Commission.

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If you have any questions concerning the foregoing or would like additional information, please contact Benjamin J. Haskin (202-303-1124, bhaskin@willkie.com), Margery K. Neale (212-728-8297, mneale@willkie.com), or the attorney with whom you regularly work.

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