Speech

Remarks at PLI: Investment Management 2022

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Good afternoon. Thank you, Paulita and Rajib, for your gracious invitation and kind welcome to this year's program on current issues and trends in Investment Management.[1] As I suspect many of you know – and as the spring regulatory agenda demonstrates[2] – there is a significant list of current issues and trends in Investment Management under consideration at the Securities and Exchange Commission right now.

Before I turn to that list, please allow me to begin with the disclaimer that my comments today are my own and do not necessarily reflect the views of the Commission, the Commissioners, or the SEC Staff.

Today, I welcome the opportunity to speak to practicing lawyers, who may be among the closest readers and avid consumers of our Division's work. I would like to address three topics: first, I will touch on three areas of particular interest to our Division; second, I'll mention two specific developments confronting the investment management industry in the coming months; and, third, I'll focus on one of our largest projects and a topic of recurring interest, money market funds.

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Let's begin with a broad array of topics on our regulatory map.

I believe that the SEC's tripartite mission provides an excellent rubric for three key areas where I envision room to improve the oversight of funds and advisers. For those of you who haven't yet memorized it, the agency's mission comprises investor protection, capital formation, and the maintenance of fair, orderly, and efficient markets.[3]

To begin with investor protection, which is a core function of the Division of Investment Management, what matters to investors most is protecting and growing their treasure. And so we must consider how we can help investors better understand fees, which directly reduce the life savings entrusted to funds. As I have noted previously, investors are, in a word, busy. The expectation that investors must closely monitor (and independently understand) complex fee arrangements and costs that may include anything from revenue sharing to soft dollars, is perhaps less than realistic. This challenge is particularly acute when the visibility of some of these arrangements is opaque, even for a regulator. The Division's focus on fees can take many forms, and—as I have noted before—our authorities under the Investment Company Act encompass not merely the form and content of disclosure, but also helping to ensure that advisers comply with their fiduciary obligations.

Next, the facilitation of capital formation is another element of the SEC's mission. Here, too, I believe that the Division of Investment Management has an important role to play. I am pleased to say that we have made great progress

recently in this area through the proposed rules on private fund advisers.[4] If adopted, the proposed rules would shine a lot of healthy light upon a darkened corner of our markets, which indirectly manages the money of many ordinary pensionholders.[5] The proposed rules would prohibit private fund advisers from engaging in certain practices that are contrary to the public interest and protection of investors. More specifically, the proposed rules would require private fund advisers to provide investors with quarterly statements,[6] require private fund advisers to obtain annual audits,[7] address the possibility for conflicts resulting from adviser-led secondary transactions,[8] and prohibit certain practices by private fund advisers that are contrary to the public interest.[9]

Third, the SEC's mission pledges to maintain fair, orderly, and efficient markets. A hallmark of healthy markets and shareholder democracy is engagement through proxy voting. As we know, fund shareholders often do not participate in important votes.[10] Further, investors in funds are not always aware how portfolio shares are voted by the funds in which they are invested.[11] This lacuna creates a scenario where investors' voices are being entirely delegated and used indirectly to influence portfolio companies' behavior without investors' awareness, attention, or, perhaps even interest. If we take a step back, and consider the size of the $30-trillion fund industry, that absence of democratic participation is certainly a noteworthy phenomenon. I see proxy voting as one of the main areas where markets could aim for increased democratization, which would, in turn, promote markets that more fairly reflect the views and priorities of American investors, not just large asset managers.

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Let me turn next to two specific changes on the horizon for investment management, relating to the cessation of LIBOR and the impact of MiFID II on the market for investment research. For those of us unaccustomed to communicating in five-letter acronyms, those are the London Inter-Bank Offered Rate and the second Markets in Financial Instruments Directive, both international developments with material relevance to the U.S. economy.

For the past several years, staff in our Division have been actively working to help prepare advisers and funds for the upcoming final transition away from LIBOR on June 30, 2023. SEC staff from several offices and divisions have issued public statements to address aspects of the transition and to raise awareness for industry participants and conducted outreach to trade groups and funds.[12] We also have participated in meetings for the Alternative Reference Rate Committee, or the ARRC, which is actively engaged in managing the LIBOR transition toward SOFR (the Secured Overnight Financing Rate), and whose members include other financial regulators and market participants.[13]

Many advisers and funds have made substantial progress in preparing for the transition, but for others, more work is needed. One remaining concern, even among the well-prepared, is operational readiness, which is the focus of the ARRC's Operations and Infrastructure Working Group.[14] Asset managers – and their lawyers – should be mindful of their disclosure obligations with respect to LIBOR as well as any valuation risks arising from the transition. This preparation could involve understanding their exposure to LIBOR-linked issues, such as identifying data sources for security-specific updates from designated parties on fallback rates and conventions, such as compounding, lookbacks and lockouts, and planning how and when portfolio positions will convert from their use of LIBOR to an alternative reference rate.

Similar to the Y2K efforts more than twenty years ago, thorough analysis, planning, and preparation by all will be necessary to avoid significant disruption. In addition, asset managers should be cognizant of how the value and liquidity of LIBOR-linked investments can change as we approach July 2023 and ensure that all material risks are disclosed to investors. Staff in our Division will continue to assess the preparedness of advisers and funds for the transition away from LIBOR, including through their participation in examinations and outreach efforts conducted by the Division of Examinations.[15] And, as with Y2K, we will – one hopes – be so collectively successful at this project that everyone afterwards will wonder whether there was ever anything to worry about.

Next, I'd like to turn to MiFID II and its impact on the US-EU market for investment research.[16] MiFID II, of course, refers to the European law that came into effect in 2018 that, among other things, essentially prevents asset managers in Europe from purchasing broker-dealer research with "soft dollars."[17] In response to these changes, nearly five years ago, SEC staff issued three no-action letters, including a no-action letter taking the temporary position that the staff would not consider a broker-dealer that accepted compensation through certain arrangements required by MiFID

II to be an investment adviser during a temporary period specified in that letter.[18] The key word to note here is that the letter provided a *temporary* position.

This letter was issued to allow time for the Division and the industry to address questions about how broker-dealers would be able to receive compensation for research services after MiFID II went into effect. Although the staff extended the temporary position through the summer of next year, the letter was not intended to be a permanent solution to the issue.[19]

Since issuing these letters, we have continued to engage extensively with market participants, including broker-dealers, investment advisers, clients of investment advisers, service providers, and others. And we understand that firms have developed a variety of solutions to address the impact of MiFID II: Some broker-dealers have dually registered as investment advisers and others utilize a registered adviser affiliate to provide certain research services.

In light of these developments in the marketplace for research services, the Division does not intend to extend the temporary position beyond its current expiration date in July 2023. Accordingly, the Division plans for the temporary position to expire on July 3, 2023, and does not expect to issue further assurances with respect to the adviser status of broker-dealers accepting compensation under MiFID II arrangements. However, to the extent that the no-action letters include statements or positions that are independent of the temporary adviser status position, such as those regarding client commission arrangements,[20] they are not being rescinded. We are making our intentions known well in advance of July 2023 to allow ample time to address any particular issue.

As we have at each step of the MiFID II process, the staff encourages members of the public to engage with us on any particular issue relating to MiFID II, including any concerns related to the expiration of the temporary no-action position. Or indeed to comment on the three other projects currently open for comment: proposals on the Names Rule and on ESG Funds, and a Request for Comment on Information Providers. As we work through our rulemaking agenda, we always appreciate and encourage thoughtful, substantive input and we review comment files. In particular, the comments that we find most helpful are those that highlight operational challenges and provide feedback on how we can best address those issues in a potential adoption.

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The final topic I would like to touch on today is money market funds. These funds, together with a few others, have at times been called “shadow banks.”[21] Today, the more common, slightly less pejorative term is “non-bank financial institution.”[22] As a proud member of the SEC’s Division of Investment Management, I tend to view the $128 trillion in regulatory assets under management subject to our oversight as a substantial universe in its own right, worthy of its own adjective. But I understand that things might seem otherwise to advocates for the non-fund community.

Money market funds enjoyed their rise to prominence, of course, largely following the adoption of Regulation Q. Regulation Q imposed ceilings on interest rates that could be paid on bank deposits, which proved to be a competitive liability during the period of high inflation in the late 1970s and early 1980s.[23] Instruments such as money market funds that could offer market interest rates (which peaked above twelve percent in 1981) prospered at the expense of bank accounts capped at the Regulation Q ceiling (which remained below six percent at the time).[24] That moment served as the spark of life for an instrument that has since grown to hold approximately $5 trillion in assets.[25]

While many practitioners may be most familiar with the 2008 financial crisis, the breaking of the buck in the Reserve Primary Fund, and the role of the run on money market funds in the 2008 crisis, there is another notable incident in the life of money market funds. That event is March 2020. It is hard not to notice that this incident has garnered considerably less interest among legal academics than the 2008 financial crisis. March 2020 is known to most of us as the onset of COVID-19, but there is not as much attention focused on these events by practitioners of law and finance as one might expect.

Today, I would like to dedicate some time to discussing March 2020 and hopefully inspire further intellectual exploration of this event with a few observations and questions for your consideration. September 2008 started primarily as a credit event.[26] In contrast, the market stress of March 2020 was more of a liquidity event.[27] As investors – particularly institutional investors – sought liquidity and safety, they reallocated their assets into cash and short-term government securities in a dramatic bouleversement of the money market fund ecosystem.[28] Government

money market funds enjoyed record flows of $838 billion in March 2020 and an additional $347 billion in April 2020.[29] That spike of well over a trillion dollars came from a variety of places, but the most challenging sources were prime money market funds.[30] During the fortnight of March 11 to 24, publicly offered institutional prime funds experienced a 30% redemption rate (representing about $100 billion), which included outflows of approximately 20% of assets during the week of March 20 alone.[31] One fund experienced a weekly redemption rate of approximately 55%.[32]

So how does a fund adviser manage this level of redemptions in one week? Not comfortably. Stresses such as these can lead to circumstances in which areas of the market can freeze and cause rates to spike.[33] That tends to be when central bankers start having to write checks – and deploring the operations of shadow banks.

But what of gates adopted in response to 2008,[34] don't they stop the redemptions? As March 2020 has vividly illustrated, some investors may have feared that if they were not the first to exit their fund, there was a risk that they could be subject to gates or fees, and this anticipatory, risk mitigating perspective potentially further accelerated redemptions.[35]

So what is a better solution? To make all these instruments bank accounts? The market had that choice forty years ago and rejected it. When interest rates are high, any instrument with an artificial ceiling is going to suffer the maladies of price controls. When interest rates are low, bank accounts may struggle to generate returns for citizens charged with providing for their own retirement. In a land largely bereft of private-sector pensions, that reduction in choice would be a true impediment. With neither pensions nor higher yielding investment instruments, ordinary Americans would face greater economic challenges. To paraphrase an Irish playwright, to lose one source of financial security may be regarded as a misfortune, to lose both looks like carelessness.[36]

But there is another story at work here, beyond retail investors, inasmuch as most reforms of money market funds focus upon institutional dollars. No matter how much academics, bankers, and some practicing lawyers might suggest otherwise, institutional money is unlikely to return to bank accounts and more likely to find its way to ultrashort bond funds. Funds now play a role in the markets that bank accounts would have a hard time replacing. Banks do not offer diversified exposure or a market rate in non-zero rate environments. Institutional deposits also impose significant costs to banks in our post-Dodd-Frank regime. In attempting to make banks safer, we have locked in a much larger role for the capital markets in our economy. Attempting to deconstruct that architecture could impose intolerable consequences upon the U.S. economy and financial system. Indeed, money market funds are now so ingrained in our system that the Federal Reserve uses them as a conduit through which to set floors for monetary policy.[37]

Perhaps there are other paths that would allow mutual funds to flourish, while still being able to operate in moments of great stress. The United States tends to pride itself, rightfully, on exporting financial innovation around the world. But on this topic, European funds have experience with a process that might be a creative solution to future liquidity crises here: swing pricing. Swing pricing allows investors in a fund to leave whenever they wish but, in moments of tight liquidity, the departing shareholders must bear the higher costs of their exit.[38] Economists everywhere would, I suspect, celebrate a mechanism that essentially prices preferences. In that vein, we are certainly looking forward to reviewing comments on this aspect of the recent money market fund proposal – which does indeed address swing pricing.[39]

For both regulators and practicing lawyers, the money market story may hold a few lessons. First, regulation is a challenge and an iterative process. Rules can be written to address behavior and analyze the likely consequences, but behavior can still change in a variety of ways that may require additional modifications. As a personal fan of soccer, I have lived through many adjustments to the offsides rule. And of course my teams have suffered more than anybody else's, and the referees are all terrible, and so forth. Yet I'm still a fan, I'm still learning the nuances of that rule, and soccer is still the world's most popular sport. So even with the breaking of the buck in September 2008 and the liquidity crunch of March 2020, our capital markets are the envy of the world. Because our vigilance and oversight is indefatigable and we are always considering ways to make market instruments more resilient.

Second, the challenges of a solution like swing pricing can at times be less conceptual and more practical. Do we have a financial plumbing system that will easily allow for this solution? Like many circumstances in which a late arrival enjoys leap-frogging technology, Europe has the benefit of comparatively younger financial infrastructure. Parts of our system hearken back to Buttonwood trees, vacuum tubes, and reel-to-reel computing. Swing pricing, broadly adopted,

might require upgrades to parts of that network.[40] But perhaps the world's largest, most globally critical financial system ought to be more modern and robust. Theories are vital, and lawyers are good at them. But learning the plumbing is an underappreciated talent. In our Division, some of the most essential members are those who best understand the pipes of America's financial system.

Third, let me be clear that we all need to pay close attention to when things break, regulators most of all. So although I do not think everything should be a bank, nor am I sanguine about problems with money market funds and other instruments vulnerable to liquidity mismatches. On the contrary, I share Chair Gensler's position that the Securities and Exchange Commission has a responsibility to protect for financial stability[41] and to increase the resilience of our financial system.[42] I have seen what happens when firms disregard regulation in an unchecked pursuit of "innovation." When some insist on moving fast and breaking things, sometimes that just leaves things broken.

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To conclude, let me express my gratitude for your kind invitation and engagement with the SEC.

I would like to end with particular thanks the incredibly diligent, public spirited members of the Division of Investment Management, specifically our colleagues in the Division's Analytics Office. Although this audience knows the value of a JD as well as any, I am equally grateful for the skillset of the many Ph.D.s, financial analysts, and data-minded JDs that we are fortunate to work with and learn from on our Analytics staff. Their analysis and input is vital to inform the work of staff across the Commission.

Thank you again for your kind invitation.

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[1] The Securities and Exchange Commission ("SEC" or "Commission") disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. This speech expresses the author's views and does not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.

[2] Securities and Exchange Commission, Agency Rule List – Spring 2022, *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235.

[3] "The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation."*See*Agency and Mission Information, *available at*https://www.sec.gov/about/reports/sec-fy2014-agency-mission-information.pdf.

[4] *See* Proposed Rule: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Advisers Act Rel. No. 5955 at 264 (Feb. 9, 2022), *available at* https://www.sec.gov/rules/proposed/2022/ia-5955.pdf ("We believe the proposed rules would facilitate capital formation by causing advisers to more efficiently manage private fund clients, by prohibiting activities that may currently deter investors from private fund investing because they represent possible conflicting arrangements, and by enabling investors to choose more efficiently among funds and fund advisers. This may reduce the cost of intermediation between investors and portfolio investments. To the extent this occurs, this would lead to enhanced capital formation in the real economy, as portfolio companies would have greater access to the supply of financing from private fund investors.").

[5] *Id.* at 8 ("Private funds and their advisers also play an increasingly important role in the lives of everyday Americans saving for retirement or college tuition. Some of the largest groups of private fund investors include state and municipal pension plans, college and university endowments, non-profit organizations, and high net worth individuals. Numerous investors also have indirect exposure to private funds through private pension plans, endowments, feeder funds established by banks and other financial institutions, foundations, and certain other retirement plans.").

[6] *Id.* at 335-338 (providing text of proposed rule 211(h)(1)-2, which would require, in certain circumstances, advisers to private funds to prepare and distribute to private fund investors quarterly statements containing certain prescribed information).

[7] *Id.* at 328-330 (providing text of proposed rule 206(4)-10, which would require, in certain circumstances, a private fund adviser to obtain an annual audit for each private fund that it advises).

[8] *Id.* at 339-340 (providing text of proposed rule 211(h)(2)-2, which would prohibit an adviser from completing an adviser-led secondary transaction without, among other things, obtaining a fairness opinion from an independent opinion provider).

[9] *Id.* at 339-340 (providing text of proposed rule 211(h)(2)-1, which would prohibit an investment adviser to a private fund from engaging in certain enumerated practices).

[10] *See, e.g.*, Broadridge & PWC, 2022 Proxy Season Preview, ProxyPulse 9 (2022), https://www.pwc.com/us/en/governance-insights-center/publications/assets/pwc-and-broadridge-proxypulse-2022-proxy-season-preview.pdf ("Institutional investor participation dropped this season from 85% of their owned shares in 2020 to 83% in 2021 (although it was in range with their participation over the last five years). Retail voting was down slightly to 30% of their owned shares, continuing a trend over the last five years.").

[11] *See, e.g.*, Proposed Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Investment Company Act Rel. No. 93169 at 9-11 (Sept. 29, 2021), *available at* https://www.sec.gov/rules/proposed/2021/34-93169.pdf (discussing the difficulty for retail investors of accessing and analyzing fund proxy voting information as currently disclosed on Form N-PX).

[12] *See* Staff Statement on LIBOR Transition—Key Considerations for Market Participants (Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and the Office of Municipal Securities) (Dec. 7, 2021),*available at*https://www.sec.gov/news/statement/staff-statement-libor-transition-20211207 ("December 2021 Staff Statement on LIBOR Transition") and Staff Statement on LIBOR Transition (Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and the Office of the Chief Accountant) (July 12, 2019),*available at*https://www.sec.gov/news/public-statement/libor-transition. This statement represents the views of the staff of the U.S. Securities and Exchange Commission ("Commission" or "SEC"). It is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved of its content. This statement, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[13] *See* Members of the ARRC, *available at* https://www.newyorkfed.org/arrc/about#members. The staff's participation in ARRC meetings is on account of the Commission's *ex officio* membership on the ARRC alongside a number of other financial regulators. *See also* December 2021 Staff Statement on LIBOR Transition, *supra* note 12.

[14] *See* Working Groups of the ARRC, *available at* https://www.newyorkfed.org/arrc/about#workinggroups.

[15] Division of Examinations, 2022 Examination Priorities at 24, *available at* https://www.sec.gov/files/2022-exam-priorities.pdf ("EXAMS will continue to engage with registrants through examinations and outreach efforts to assess their exposure to LIBOR and their transition to an alternative reference rate, preparations for the cessation of many LIBOR rates beginning immediately after December 31, 2021, and the transition to an alternative reference rate, in connection with registrants' own financial operations, the exposures of their clients and customers, and their obligations when recommending LIBOR-linked instruments.").

[16] *See* Directive 2014/65, of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Commission Directive 2002/92 and Council Directive 2011/61, O.J. (L 173) 57, 349, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:173:TOC ("MiFID II"), and equivalent national rules of member states. MiFID II was amended in 2021 to allow certain research to be paid for through a bundled commission. *See* Directive 2021/338 of the European Parliament and of the Council of 16 February 2021, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L0338&from=EN.

[17] *Id.*

[18] *Securities Industry and Financial Markets Association*, SEC Staff No-Action Letter (Oct. 26, 2017), *available at* https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm.

[19] In November 2019, the staff issued another no-action letter to SIFMA extending the temporary assurances to July 3, 2023. *Securities Industry and Financial Markets Association*, SEC Staff No-Action Letter (Nov. 4, 2019) ("November 2019 NAL"), *available at* https://www.sec.gov/investment/sifma-110419

[20] *Id.* at n.8 (stating that "the use of [client commission arrangements] does not affect whether the broker-dealer exclusion may be available in connection with the receipt of payments for research under section 28(e)").

[21] *See, e.g.*, Financial Crisis Inquiry Commission, Financial Crisis Inquiry Report at 30 (Jan. 2011), *available at* https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf ("[Money market] funds differed from bank and thrift deposits in one important respect: they were not protected by FDIC deposit insurance. Nevertheless, consumers liked the higher interest rates, and the stature of the funds' sponsors reassured them. The fund sponsors implicitly promised to maintain the full $1 net asset value of a share. The funds would not 'break the buck,' in Wall Street terms. Even without FDIC insurance, then, depositors considered these funds almost as safe as deposits in a bank or thrift. Business boomed, and so was born a key player in the shadow banking industry, the less-regulated market for capital that was growing up beside the traditional banking system. Assets in money market mutual funds jumped from $3 billion in 1977 to more than $740 billion in 1995 and $1.8 trillion by 2000.").

[22] *See, e.g.*, U.S. Dept. of Treasury, Financial Stability Oversight Council Statement on Nonbank Financial Intermediation (Feb. 4, 2022), *available at* https://home.treasury.gov/news/press-releases/jy0587 ("Nonbank financial institutions (NBFIs) are an essential source of capital in financial markets and provide vital funding to the U.S. economy. In 2016, the Financial Stability Oversight Council (Council) issued a statement describing risks to financial stability that may arise from certain asset management products and activities. The market dislocations of March 2020 demonstrated that some NBFIs remain vulnerable to acute financial stresses and may amplify or transmit stress in the financial system. In 2021, the Council made it a priority to evaluate and address the risks to U.S. financial stability posed by three types of NBFIs: hedge funds, open-end funds, and money market funds (MMFs).")

[23] *See* R. Alton Gilbert, Requiem for Regulation Q : What it Did and Why It Passed Away, *Review*, Federal Reserve Bank of St. Louis at 30 (Feb. 1986), *available at* https://files.stlouisfed.org/files/htdocs/publications/review/86/02/Requiem_Feb1986.pdf.

[24] *Id.*

[25] *See* Money Market Fund Statistics, Form N-MFP Data, period ending May 2022 at 1 (June 16, 2022), *available at* https://www.sec.gov/files/mmf-statistics-2022-05.pdf (reporting, for the period ending May 2022, cumulative money market fund net assets of $5.018 trillion).

[26] *See* Final Rule: Money Market Fund Reform, Investment Company Act. Rel. No. 29132 at 5-7 (Feb. 23, 2010), *available at* https://www.sec.gov/rules/final/2010/ic-29132.pdf.

[27] *See generally* Proposed Rule: Money Market Fund Reforms, Investment Company Act Rel. No. 34441 at 14-27 (Dec. 15, 2021) ("2021 MMF Proposal"), *available at* https://www.sec.gov/rules/proposed/2021/ic-34441.pdf.

[28] *Id.*

[29] *Id. See also* Viktoria Baklanova, Isaac Kuznits, and Trevor Tatum, *Prime MMFs at the Onset of the Pandemic: Asset Flows, Liquidity Buffers, and NAVs* (Apr. 15, 2021), *available at* https://www.sec.gov/files/prime-mmfs-at-onset-of-pandemic.pdf.

[30] *See* Viktoria Baklanova, Isaac Kuznits, and Trevor Tatum, *Prime MMFs at the Onset of the Pandemic: Asset Flows, Liquidity Buffers, and NAVs* at 1 (Apr. 15, 2021), *available at* https://www.sec.gov/files/prime-mmfs-at-onset-of-pandemic.pdf ("At the onset of the pandemic, in mid-March 2020, amidst heightened volatility throughout financial markets, investors redeemed $134 billion from prime and tax-exempt MMFs, while government MMFs received inflows of $838 billion. Although the MMF industry as a whole grew during this period, the large outflows from prime MMFs highlighted the remaining structural vulnerabilities in these funds.").

[31] 2021 MMF Proposal, *supra* note 27, at 15.

[32] *Id.*

[33] *Id.* at 14. *See also* SEC Staff Report on U.S. Credit Markets Interconnectedness and the Effects of the COVID-19 Economic Shock at 23 (Oct. 2020), *available at* https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf (describing the impact of the pandemic on the market for commercial paper and certificates of deposit and the resulting "frozen market" that market participants encountered when seeking liquidity in the secondary market).

[34] *See generally* Final Rule: Money Market Fund Reform; Amendments to Form PF, Investment Company Act Rel. No. 31166 (July 23, 2014), *available at* https://www.sec.gov/rules/final/2014/33-9616.pdf.

[35] *See, e.g.*, 2021 MMF Proposal, *supra* note 27, at 19 ("Evidence suggests that concerns about the potential for fees or gates contributed to some investors' redemption decisions. For example, one research paper indicated that institutional prime money market fund outflows accelerated as funds' weekly liquid assets went close to the 30% threshold."); Chair Gary Gensler, Statement on Money Market Fund Reform (Dec. 15, 2021), *available at* https://www.sec.gov/news/statement/gensler-mmf-20211215 ("Secondly, the proposed amendments also would prevent money market funds from imposing limits on redemptions in times of stress, such as redemption fees and so-called "gates" — the ability to stop redemptions. The ability to stop or limit redemptions, which were included as part of the earlier reforms, actually may have encouraged runs on money market funds in March 2020 rather than making the system more resilient.").

[36] Oscar Wilde, Importance of Being Earnest.

[37] *See, e.g.*, Federal Reserve Bank of New York, Repo and Reverse Repo Agreements, *available at* https://www.newyorkfed.org/markets/domestic-market-operations/monetary-policy-implementation/repo-reverse-repo-agreements ("In July 2021, the FOMC established a Standing Repo Facility (SRF) to serve as a backstop in money markets to support the effective implementation and transmission of monetary policy and smooth market functioning.").

[38] *See* 2021 MMF Proposal, *supra* note 27, at 44-45 ("We are proposing a swing pricing requirement specifically for institutional prime and institutional tax-exempt money market funds that would apply when the fund experiences net redemptions. This requirement is designed to ensure that the 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 . . . Swing pricing is a process of adjusting a fund's current NAV such that the transaction price effectively passes on costs stemming from shareholder transaction flows out of the fund to shareholders associated with that activity.").

[39] *See generally* 2021 MMF Proposal, *supra* note 27.

[40] *See id*. at 73-79 (acknowledging and addressing the operational considerations involved in swing pricing and requesting comment).

[41] *See* Chair Gary Gensler, Statement before the Financial Stability Oversight Council on Money Market Funds, Open-End Bond Funds, and Hedge Funds (Feb. 4, 2022), *available at* https://www.sec.gov/news/statement/genseler-fsoc-statement-020422.

[42] *See, e.g.*, Chair Gary Gensler, A Century with a Gold Standard, DERA Annual Conference on Financial Market Regulation (May 6, 2022), *available at* https://www.sec.gov/news/speech/gensler-acfmr-20220506 ("Finally, we use "wise restraints" to strengthen the resiliency of our financial system. Financial stability is a critical part of our work at the SEC, alongside other regulators. Resiliency gets to each part of our mission, especially as it relates to maintaining fair, orderly, and efficient markets.").