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Update on Money Market Mutual Fund Liquidity Facility & Related No-Action Letter

Yesterday I [posted](#) a summary of the Federal Reserve Bank of Boston's [Money Market Mutual Fund Liquidity Facility](#) (the "Facility"). Today it expanded the Facility to include tax exempt money market funds and municipal securities. Rather than write a separate post, I updated my original post so all the information is in one place and up to date. The blog editor does not have search functions, so forgive me if I haven't removed every reference to "Prime" or inserted "Muni" in every appropriate spot. A favorite client has also furnished me with a companion no-action letter obtained by the Investment Company Institute ("ICI"). I cannot link to the letter because I have not found it on either the SEC's or ICI's website. The letter is summarized below.

Relief from Section 23A of the Bank Holding Company Act

The Board of Governors of the Federal Reserve System is apparently providing a letter (the "Exemption Letter") to each bank holding company that manages money market funds ("Funds"). The letter exempts from Section 23A of the Bank Holding Company Act, and Regulation W thereunder, the purchase of certain assets by a bank subsidiary (a "Bank") from affiliated Funds. This would allow a Bank to provide liquidity to its affiliated Funds using the Facility or the Bank's reserves. One condition of the Exemption Letter requires that any assets must be purchased "at fair market value as determined by a reliable third-party pricing service."

Rule 17a-9

[Section 17\(a\)](#) of the Investment Company Act of 1940 would prohibit the sale of securities from a Fund to an affiliated Bank. [Rule 17a-9](#), however, exempts the sale of securities from a money market fund to an affiliated person subject to certain conditions. One condition is that the purchase price must be "the greater of the amortized cost of the security or its market price." If the pricing service's price for a security is at or above its amortized cost, Rule 17a-9 would permit an affiliated Bank to purchase the security in compliance with the Exemption Letter. If the pricing service's price is lower, however, then the affiliated Bank could not comply with the purchase price conditions of *both* the Exemption Letter and Rule 17a-9.

ICI's No-Action Letter

In a [letter](#) to the ICI dated March 19, 2020, the Division of Investment Management (the "Division") took the no-action position that purchases of securities in compliance with the Exemption Letter would not violate Section 17(a) or Rule 17a-9. The no-action letter specifically permits sales to an affiliated Bank at a price "determined by a reliable third-party pricing service," regardless of the relationship between the price and the security's amortized cost. The Fund must comply with the conditions of Rule 17a-9 that do not conflict with the Exemption Letter or banking regulations. This position applies only to sales made in reliance on the Exemption Letter. The Fund must also file a [Form N-CR](#), which is used to report financial support provided to a Fund by an affiliated person. Generally, the form must be filed by the next business day after a sale under Rule 17a-9. The no-action letter will be effective until the Division gives contrary notice to the ICI.

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