

## Revised Money Market Reform FAQs—Why Gating Would Be an Emergency

This is the second installment of my review of the update to the [2014 Money Market Fund Reform Frequently Asked Questions](#) (the "FAQs") released on August 4th. This post will explain a new FAQ that addresses whether gating a fund represents an "emergency." "**Emergency**" Exits in Fund Organizational Documents [Section 22\(e\)](#) of the Investment Company Act of 1940 prohibits mutual funds from suspending the right of redemption except in specified circumstances. These circumstances include:

any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the value of its net assets[.]

The statute authorizes the SEC to "determine the conditions under which ... an emergency shall be deemed to exist" by adopting regulations. A mutual fund's organizational documents govern the right to redeem shares. To preserve the flexibility granted in section 22(e), fund organizational documents usually permit the suspension of redemptions under the circumstances described in section 22(e), including the existence of an emergency as determined by the SEC. **Gating Would Be an Emergency** Beginning October 14, 2016, a non-government money market fund will be permitted to suspend redemptions for up to 10 business days if (a) its weekly liquid assets are less than 30% of its total assets and (b) the board determines it is in the best interests of the fund. If this combination of circumstances does not qualify as an "emergency" for purpose of section 22(e), many money market funds might need to hold shareholder meetings to amend their organizational documents. The provision of Rule 2a-7 permitting suspension of redemptions operates "notwithstanding section 22(e)," rather than pursuant to the exceptions provided in the subsection. Nevertheless, according to the answer to new Question 31:

In the staff's view, such extraordinary circumstances [in which a fund could suspend redemptions] would in effect likely create an emergency for the fund. Accordingly, the staff believes that a suspension of redemptions by a money market fund, as permitted by rule 2a7(c)(2)(i), would be because of such an emergency.

It is important to note that the "extraordinary circumstances" include the board's determination that suspension of redemptions is in the best interests of the fund. So weekly liquidity assets falling below 30% of total assets should not always be considered, by itself, to constitute an emergency. **Impact on Organizational Documents** The SEC does not have authority over the interpretation of fund organizational documents, which are governed by state laws. However, insofar as provisions of organizational documents permitting suspensions of redemptions are designed to conform to section 22(e), it makes sense to interpret "emergency" consistently in both contexts. Thus, the staff's response to new Question 31 should provide persuasive authority for directors and trustees to conclude that they have authority to gate a money market fund under its current organizational documents.

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