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Critic: Money Fund Plan Needs More Fund Disclosure

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Fund groups that resort to using the Treasury's \$50 billion guarantee for money market funds that break the buck may have a hard time identifying those shareholders covered by the plan, says one critic.

That's because the plan lacks a mandate that enables funds to collect information on investors who purchased affected funds through intermediaries, says Niels Holch, executive director of the Coalition of Mutual Fund Investors.

With an Oct. 8 deadline looming, several major fund players have already signed on to the Treasury's guarantee program. The program is designed to protect investors who realize losses when their fund's net asset value falls below \$0.995 and is limited to accounts and assets as of the close of business on Sept. 19.

Holch says fund firms should know who their investors are to ensure that those who need to rely on the plan are made whole. The Treasury plan does not require that level of transparency, he says.

"There really are no teeth to it," Holch says. "I want to make sure shareholders who bought through intermediaries get paid off the same as shareholders who bought directly."

Holch is calling on fund companies to follow a rule that already allows them to get information about their investors through information-sharing agreements with intermediaries. Rule 22c-2, known as the redemption fee rule, is meant to help funds better detect market timing. It also can help reassure investors that their funds are doing all they can to protect them during this volatile period, Holch says.

The Treasury plan does state that funds and their advisors "use their best efforts" to ensure that investors represented by intermediaries are made whole. The Treasury also can request that funds provide it and the Securities and Exchange Commission with a written plan describing what actions it will take to make sure investors are paid if there is a loss, but leaves it for intermediaries to distribute payment to investors.

Holch also suggests that the SEC, which will partner with Treasury on the plan, play a role in ensuring the transparency he'd like to see. Bob Plaze, associate director of the SEC's Division of Investment Management, says there is nothing that prevents funds from using Rule 22c-2, but stresses that because the plan is a contract between the fund and Treasury, it is not a regulatory issue.

"The funds and its intermediaries are going to have to work this issue out, and we and the Treasury were apprised by the [Investment Company Institute] that it would not be a significant issue," Plaze says.

Supporters of the plan say imposing a Rule 22c-2-type apparatus would be impractical, unnecessary and costly. Marty Burns, director, institutional operations and services with the ICI, says it is unlikely that funds would go this route since their ultimate goal is to never break the buck.

Burns says under a Rule 22c-2 scenario, funds would have to gather investor information up front from their intermediaries, as well as store and protect it in anticipation of there being problems. Burns says he "doesn't see any funds going through that expense to do this." Instead, funds that may need investor information are more likely to work with their intermediaries, such as banks, recordkeepers and broker-dealers, to obtain this information if necessary.

"It is not likely that many, or hopefully any, funds will need this information," Burns says.

Further, it is required that intermediaries who lose a client to another intermediary inform the fund firm of the switch. The Treasury plan covers shares in money market funds as of Sept. 19, if their funds cannot maintain a \$1 net asset value or if the NAV dips below \$0.995.

Participating funds are required to pay a non-refundable premium of 1 basis point for shares with an NAV greater than \$0.9975 or 1.5 basis points for shares with an NAV less than \$0.9975 but greater than \$0.995. But funds with NAVs of less than \$0.995 on Sept. 19 are not eligible to participate.

Money market funds that use the guarantee would close and liquidate and have 30 days to make sure investors are paid. That short time span requires firms to work closely with their intermediaries to find the investors who are covered, according to ICI. And if a fund is not able to identify an investor, it is required to return the money to Treasury within 60 days.

Dick Phillips, partner at **K&L Gates**, says he doesn't see why funds can't rely on their intermediaries to ensure their shareholders are reimbursed. He says intermediaries are uneasy about divulging clients' names and ultimately have the same goal of making sure investors are taken care of during this critical time.

"Intermediaries want to protect the names of their customers," Phillips says. "[Intermediaries] realize this is a sensitive time and they have to communicate with nervous investors."

Brian McCabe, partner with **Ropes & Gray**, says as long as funds use their "best efforts," as noted by the Treasury plan, to make sure damaged investors get paid, they should be fine with regulators. He also says it would be difficult to set up a Rule 22c-2 system for what is intended to be a three-month program and for something that may be a remote possibility for funds.

"Making sure [intermediaries] do the right thing with the proceeds is not a hard thing," McCabe says.

But Holch says with funds already having experience with Rule 22c-2, it would not be difficult to apply the same principles to know who their investors are. Even funds comfortable with their intermediaries should not take any chances now, he says.

"Whether you buy through an intermediary or directly, you are a shareholder in the fund, so I do think it is the fund's responsibility, but they will not be able to do it without the cooperation of the intermediary," Holch says. "You also have Rule 22c-2 to have full transparency, so I don't know why you wouldn't go the extra mile here to protect shareholders."

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