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♦ SOME VIEW MMF-REFORM DELAY AS HELPING BUILD FINAL-RULE CONSENSUS

Media reports last week that members of the Securities and Exchange Commission have yet to reach consensus on money-market mutual fund reforms proposed more than a year ago have dampened expectations of a late second quarter or early third quarter final-rule announcement.

Although official spokespersons for the SEC declined to comment, *The Wall Street Journal* cited anonymous sources "familiar with the process" in its June 12 report that "a final rule could be delayed until the fall." Then Bloomberg reported that a delay is likely and that "support is eroding for the agency's plan to rein in the riskiest funds."

The *WSJ* attributed the delay, in part, to the recent addition of two SEC commissioners, said to be "still fleshing out their views." Bloomberg cited recent speeches by the two new commissioners, Kara Stein and Michael Piwowar, in which each questioned the likely effectiveness of the SEC's proposals -- a floating NAV for prime institutional funds and redemption fees and gates in times of market stress -- and each expressed concern over potential unintended consequences of their implementation. Stein and Piwowar joined the commission following the vote last June to put a massive money-fund reform proposal out for comment.

Causes of Delay

"It's very unclear which way the SEC will move in this area, especially with two new commissioners whose views on this subject are largely unknown," Niels Holch, partner at law firm Holch & Erickson LLP, told iMoneyNet. "It will take time for them to educate themselves on the issues and for the SEC to understand the tax and accounting implications of several of the proposals."

The challenge of getting the solution right may also be a key cause for the delay. "The apparent paralysis is mainly attributable to the difficulty of finding ways to further strengthen the product without destroying its utility," Stephen Keen of Reed Smith LLP told iMoneyNet. "There are no easy answers to the problems posed by reform, as I'm sure the staff working on reforms has learned."

The mandate of the Financial Stability Oversight Council may also be playing a role, Keen contended. "'FSOC won't accept it' is a refrain that has stymied reform discussions," he said. "The industry was near a consensus on gates and fees in 2011 until FSOC insisted that any reform include a capital component. That unreasonable demand for capital delayed reform efforts for two years."

The SEC may indeed "hear the drumbeat of the FSOC and other Federal Reserve officials who have advocated for MMF reform," noted Joan Ohlbaum Swirsky of law firm Stradley Ronon Stevens & Young LLP. "FSOC may act if SEC doesn't or they could go ahead and designate a fund or asset manager systemically important," Swirsky explained to iMoneyNet. The issue could be influenced by international developments as well, she said. "A move in the new European Parliament to regulate European money funds could focus fresh attention on the issue here."

Internal SEC issues may also have impeded progress on consensus-building, Swirsky added. Under the agency's former chairman, "some commissioners expressed dissatisfaction with the reform process. Mary Jo White has provided a fresh start and has deemed MMF reform a priority," Swirsky said, and she stressed that White and other commissioners are now focused on assuring that the MMF-reform issue is addressed by the SEC rather than by other regulators.

That the SEC's June 2013 proposals, particularly the FNAV requirement, are fraught with consequences for both fund providers and investors have also frustrated consensus, according to Alice Joe, managing director of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness. "We remain extremely concerned about the tax and operational challenges of the FNAV proposal and believe the substantial effort and costs of the floating NAV will deter many corporate treasurers and other institutional investors from continuing to invest in prime funds," she told iMoneyNet. That, Joe said, will "reduce demand for commercial paper and increase short-term financing costs" for issuers.

The SEC faces other daunting challenges to reach consensus. "One of the main difficulties is that reform depends on predictions of investor behavior, which is very difficult," Swirsky said. Beyond that, "the SEC needs to reconcile the myriad views of industry stakeholders," whose assessment of the reform issue and whose suggestions for addressing it are diverse. Swirsky noted that comment letters in response to the SEC's proposals "represented a broad spectrum of views."

The prospect of a legal challenge requires the SEC to justify a final reform rule in order to withstand such a challenge, but Swirsky pointed out that even a rigorously data-driven reform process "doesn't seem to ease the path to consensus." Industry and academic commenters to the SEC's recent analyses of six reform-related issues (See *Money Fund Report* #2003, May 2) "critiqued the staff's data in each study and generally disagreed with the conclusions implied in each study." The commission's burden is made even greater, Swirsky added, by the need to rely on actions that she noted are entirely outside the commission's control, such as by the Internal Revenue Service or Congress.

Regardless of the importance some may attach to unanimity among commissioners on a final MMF-reform rule, the vote may instead simply reflect the complexity of the issues and the diversity of perspectives. "The SEC does not always resolve issues with a unanimous vote," Holch observed, "and a 3-2 split is very likely here."

The chair herself may be instrumental in building consensus, if not unanimity, among commissioners. Upon assuming leadership of the SEC, White "was right to disappoint FSOC in order to keep reform moving forward," Keen observed. "If she can show similar wisdom regarding the floating NAV," and presumably the gates-and-fees proposal as well, he said "commissioners could coalesce in time around a final rule that incorporates less radical reforms."♦

MFR COMMENTARY

Net assets of 1,013 Taxable MMFs increased $2.56 billion to $2.332 trillion as of June 24. Total Taxable Institutional fund assets increased $4.66 billion. Taxable Retail fund assets declined by $2.10 billion.

The iMoneyNet Money Fund Average™/All Taxable 7-Day Yield remained at 0.01 percent for the 58th straight week. The All Taxable 30-Day Yield remained at 0.01 percent for the 55th consecutive week. The Taxable WAM shortened to 43 days from 44 days the week before.

Net assets of 419 Tax-Free and Municipal MMFs decreased $696.9 million, bringing the total to $255.56 billion as of June 23.

The iMoneyNet Money Fund Average™/All Tax-Free 7-Day Yield was unchanged at 0.01 percent for the 60th consecutive week. The All Tax-Free 30-Day Yield remained at 0.01 percent for the 78th straight week. The Tax-Free WAM lengthened to 32 days from 31 days the week before.

A one-week increase of $1.87 billion brought total net assets of 1,432 Taxable and Tax-Free money funds to $2.587 trillion.