

June 8, 2012

Joel Miller, Group Leader  
Asset Management Group  
Credit & Market Risk Division  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

Re: Office of the Comptroller of the Currency Proposed Regulation on Short Term Investment Funds (Docket ID OCC-2011-0023)

Dear Mr. Miller:

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to comment on a proposal by the Office of the Comptroller of the Currency (OCC) that would revise the provisions of its fiduciary regulation, 12 C.F.R. Part 9 (Part 9), applicable to short term investment funds, or STIFs (Proposal).<sup>2</sup> The Proposal would amend and expand Part 9 by installing safeguards that are intended to address the risk of loss to the principal amount of a STIF. We understand that a primary catalyst for the Proposal was an October 2010 report issued by the President's Working Group on Financial Markets, which recommended that the bank regulators consider strengthening the regulation and supervision of investment products that seek to maintain a stable net asset value (such as STIFs), in order to mitigate systemic risk in the U.S. financial marketplace. ABA has studied the Proposal and analyzed its possible effects on the operations of STIFs through its Collective Funds Task Force, a working group comprising ABA member banks that maintain bank collective investment funds, including STIFs, on behalf of their customers.

While ABA supports the OCC's objective to ensure a strong, stable environment for the operation of STIFs, we note a number of issues related to the following aspects of the Proposal: (1) definitions of certain terms; (2) grandfathering of assets that will have been purchased prior to the finalization of the Proposal; (3) stress testing; (4) actions required in the event the difference between a STIF's marked-to-market net asset value per participating interest exceeds the STIF's amortized cost price by \$0.005; (5) contingency funding; (6) content and timing of required reporting, disclosures, and notifications; (7) manner of delivery of required reports; (8) harmonization of regulatory requirements governing STIFs; and (9) effective date and transition period. Because we believe that an appropriate resolution to these outstanding issues would help ensure a clear roadmap for banks to follow in administering their respective STIFs consistent

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<sup>1</sup> ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at [www.aba.com](http://www.aba.com).

<sup>2</sup> The Proposal is found at 77 Fed. Reg. 21,057 (2012). The portion of the Part 9 regulation that applies to STIFs is found at 12 C.F.R. § 9.18(b)(4)(ii)(B) (2012).

with the requirements of Part 9 and their responsibilities to customers, we seek the OCC's clarification and/or confirmation as outlined below.

We agree with the OCC that STIFs are distinctly different from money market mutual funds (MMMFs). For example, unlike MMMFs, which typically do not limit their investors based on eligibility criteria, each participant in a STIF must be an eligible account pursuant to Part 9 (Participating Account), which requires that assets invested in a STIF be assets that the bank "holds as fiduciary" as stated in Part 9. STIFs and their administering banks are subject to rigorous, on-going supervision and examination under standards applicable to trust banks and bank trust departments. For these reasons among others, we support the OCC distinguishing certain aspects of the Proposal from the SEC's Rule 2a-7 applicable to MMMFs.

**1. Definitions of Certain Terms.**

**a. "STIF Participants".**

The reporting requirements of Section 9.18(b)(4)(iii)(I) of the Proposal require, among other things, that disclosures be made to "STIF participants." The term "STIF participant" is not defined in the Proposal. Rather than try to define a "STIF participant," for purposes of this section, we recommend that disclosures be made to those individuals or entities that would receive a regular periodic accounting with respect to an investment in the STIF. We ask that the OCC confirm that the term, "STIF participant" refers to a Participating Account. The OCC may want to provide more clarity in the regulation by amending the beginning of Section 9.18(b)(4)(iii)(I) to read as follows: "(I) Adopt procedures that require a bank to disclose to each person who ordinarily would receive a regular periodic accounting with respect to each participating account and to the OCC's . . . ." (The amendatory language referring to STIF participants is identical to the language found in Section 9.18(b)(6)(iv) of the OCC's fiduciary regulation.<sup>3</sup>) In addition, the reference to "STIF participants" in Section 9.18(b)(4)(iii)(L) should be replaced with "accounts invested in the STIF."

**b. "Independent Risk Manager."**

Section 9.18(b)(4)(iii)(H) of the Proposal also refers to an "independent risk manager." Although this term is not defined in the Proposal, we ask the OCC to confirm that an "independent risk manager," as that term is used in the Proposal, may include a person, group, or function designated as such and need not be a third party service provider or other unaffiliated third party.

**2. Grandfathering of Non-Conforming Assets Held in STIFs.**

Under the Proposal, a STIF's dollar-weighted average portfolio maturity would be reduced from 90 days or less to 60 days or less. The Proposal further would limit the portion of the STIF's portfolio that could be held in longer term variable- or floating-rate securities by limiting the dollar-weighted average portfolio life maturity to 120 days or less. Some of our bank members,

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<sup>3</sup> 12 C.F.R. § 9.18(b)(6)(iv).

however, currently hold in their STIF portfolios certain longer-term securities that, if retained, would make it extremely difficult or impossible to meet the 120-day requirement.

ABA requests, therefore, that all “non-conforming assets” held in STIFs on the publication date of the amended regulation be grandfathered, regardless of asset type. Such non-conforming assets, which would be defined as any asset with a remaining maturity of greater than 397 days as of the effective date, would be excluded from the calculation of the STIF’s dollar-weighted average portfolio maturity and its dollar-weighted average portfolio life maturity, respectively. The OCC’s exclusion of non-conforming assets from the calculations would recognize that such assets were eligible investments at the time of purchase and that forcing the sale of these assets would often not be in the best interests of the STIF and the Participating Accounts. In order to prevent any evasion of the regulatory requirements, the grandfathering of non-conforming assets could be conditioned on the non-conforming assets being held “until maturity under usual circumstances,” consistent with the rules currently applicable to STIFs under Part 9.18.

### **3. Stress Testing.**

The Proposal’s Section 9.18(b)(4)(iii)(H) would require a bank managing a STIF to adopt various procedures for stress testing the STIF’s ability to maintain a stable net asset value (NAV) for participating interests in the fund. A bank further would be required to have the stress testing performed on no less than a monthly basis. Although we support the OCC’s desire for banks to stress test a STIF’s ability to maintain a stable NAV as part of a bank fiduciary’s duty to administer the STIF prudently, we believe that the methodology and frequency of such testing should be left to the discretion of the bank maintaining the STIF.

### **4. Implementation of the \$0.995 Threshold.**

We are unclear how the OCC expects to implement the \$0.995 per participating interest threshold. First, given current technological and operational limitations, we are uncertain of the feasibility of a bank implementing a program of purchasing and redeeming STIF participating interests at other than a \$1.00 NAV or suspending redemptions in those cases where a STIF is utilized as a cash sweep vehicle or a securities lending collateral vehicle. The bank administering the STIF is in the best position to evaluate all of the existing factors. Therefore, we request that the OCC confirm that a bank administering a STIF be permitted to decide the most appropriate actions to protect Participating Accounts from dilution or other unfair results, in the event the difference between the marked-to-market value from the amortized cost value exceeds \$0.005 per participating interest.

ABA also urges the OCC to confirm that adoption of procedures in the event the STIF has repriced its NAV below \$0.995 (Section 9.18(b)(4)(iii)(K) of the Proposal) does *not* mean that the bank is required to begin liquidation of the STIF. Changing the language in Section 9.18(b)(4)(iii)(K) from “. . . and sell the STIF’s participating interests” to “. . . and *offer* the STIF’s participating interests” would remedy this ambiguity.

## **5. Contingency Funding.**

In the preamble to the Proposal, the OCC states that “To address this concern [regarding the need for funds to have adequate liquidity to satisfy withdrawal requests], the proposal would require adoption of standards that include provisions to address *contingency funding needs*.”<sup>4</sup> We ask that the OCC confirm that the phrase, “contingency funding needs” refers to contingency funding that would involve the assets of the STIF itself (*e.g.*, standards regarding allocations to overnight liquidity) , rather than the STIF obtaining a line of credit or similar arrangement with a lending institution, which may not be a legally permissible or operationally feasible option.

## **6. Disclosures and Notifications.**

ABA and its member institutions are concerned about the Proposal’s disclosure requirements in Section 9.18(b)(4)(iii)(I). This provision requires the disclosure of mark-to-market and amortized cost NAV per participating interest, among other things, to STIF participants and the OCC within five business days of the end of each month. Unfortunately, this disclosure could lead to increased redemption requests that in turn would magnify any NAV pricing deviations. To address our concern, we recommend that the disclosure timing requirement be extended to 60 calendar days after the end of the reporting period for the same reasons as were articulated by the SEC in adopting a similar requirement for MMMFs in 2010.<sup>5</sup>

Further, due to the time involved in compiling and verifying the accuracy of information for the purposes of disclosure, we request that the OCC delete the requirement for banks to disclose portfolio characteristics, such as dollar-weighted average portfolio maturity and portfolio life maturity, on a monthly basis, or alternatively, modify the frequency requirement from monthly to quarterly, assuming the timing requirement is extended to 60 calendar days after the end of the reporting period.

For similar reasons, ABA requests that the OCC modify the Proposal to allow a bank at least five business days to notify the OCC of liquidity or valuation stress instead of one business day. Five or more business days will give a bank sufficient time to gather applicable facts, make an appropriate determination regarding a preliminary course of action, and prepare a complete and clear notification.

Finally, we would like to request clarification of the OCC’s rationale for the requirement to notify the OCC of in-kind distributions from a STIF in the event that a Participating Account requests an in-kind distribution. We are unclear why this should prompt OCC notification, since in-kind distributions are not necessarily an indication that a STIF is experiencing liquidity or valuation stress. If the OCC is concerned that in-kind requests may lead to such stress, the OCC could amend Section 9.18(b)(4)(iii)(J)(3) as follows: “(3) Any withdrawal distribution in-kind of the STIF’s participating interests or segregation of portfolio participants, *where such action*

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<sup>4</sup> 77 Fed. Reg. at 21,061. [Emphasis added.]

<sup>5</sup> *See, e.g.*, SEC 2010 amendments to Rule 2a-7, 75 Fed. Reg. 10,060, 10,085 (2010) (“Nevertheless, we understand commenters’ concerns that the disclosure of certain fund information, including market-based values, might result in investor confusion and alarm, at least in the short term, that could result in redemption requests that exacerbate pricing deviations. In response to these and other concerns discussed above, [the SEC is] delaying the public availability of the information filed on Form N-MFP for 60 days after the end of the reporting period.”).

*results from the bank's efforts to reduce dilution of participating interests or other unfair results to participating accounts in the event the difference calculated pursuant to paragraph (b)(4)(iii)(G)(1) of this section exceeds \$0.005 per participating interest.”*

## **7. Manner of Delivery of Required Reports.**

Section 9.18(b)(4)(iii)(I) of the Proposal appears to suggest that banks might be required to deliver reports to the OCC, as well as to STIF participants, in paper form. This would be unnecessarily burdensome and costly for a STIF. We would like the OCC to confirm that the reports required under the Proposal, including those required under Section 9.18(b)(4)(iii)(I), may be delivered to the OCC electronically (*i.e.*, by electronic mail and in any reasonable electronic format, such as PDF files), or be made available to OCC staff by accessing a secure portion the bank's website,<sup>6</sup> where such information likewise may be made available to the Participating Accounts.<sup>7</sup>

## **8. Harmonization of Regulatory Requirements Governing STIFs.**

Some of our members are state-chartered banks and savings associations that do not have the OCC as their primary federal regulator. Such members generally conform the activities of their common and collective funds, including STIFs, to the requirements of Part 9. Further, as is true for national banks, funds organized by state-chartered banks and savings associations under Section 9.18(a)(1), including STIFs, must be maintained “in conformity with the rules and regulations prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks” in order to qualify for tax exemption pursuant to Section 584 of the Internal Revenue Code. *See* Internal Revenue Code § 584(a)(2). Sections 9.18(b)(4)(iii)(I) and (J) of the Proposal call for certain information to be reported directly to the OCC.

Inasmuch as state-chartered banks, trust companies, and savings associations are not subject to regulation by the OCC, it would be inappropriate to require them to report information to the OCC as a condition for obtaining Section 584 treatment. We therefore request that the OCC staff provide any needed clarification to confirm that the final rule will not impose such a reporting requirement on state-chartered banks and savings associations.

## **9. Effective Date and Transition Period.**

The Proposal will require a number of changes to bank administrative practices and systems. We therefore request that: (i) with the exception of the reporting requirements, the effective date of the Proposal be 12 months from the date that it is finalized, in order to allow banks adequate time to transition to compliance with the Proposal's requirements; and (ii) with respect to the reporting requirements, that the implementation date for such requirements be 12 months from

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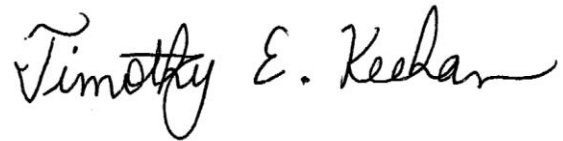
<sup>6</sup> The bank's website could be configured so that only authorized parties would have access to the information required under Section 9.18(b)(4)(iii)(I); *e.g.*, access through a password-protected web portal.

<sup>7</sup> For STIF participants, for example, a bank could post monthly STIF holdings on a secure area of its website and notify STIF participants when and where the relevant information will be posted.

the effective date of the Proposal, in order to give banks the time needed to adjust, prepare, and integrate the new requirements into their existing reporting systems.

We thank the OCC for the opportunity to comment on the Proposal. If you have any questions or need additional information, please do not hesitate to contact me at 202-663-5479 or Phoebe Papageorgiou at 202-663-5053.

Sincerely yours,

A handwritten signature in black ink that reads "Timothy E. Keehan". The signature is written in a cursive style with a large, stylized initial 'T'.

Timothy E. Keehan  
Vice President & Senior Counsel