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August 7, 2006

The Hon. Thomas S. Zilly
United States District Court
700 Stewart Street
Seattle, WA 98101

Re: Proposed Rule Allowing Increased Yield on Bankruptcy Estate Funds

Dear Judge Zilly:

Baker & Hostetler LLP wishes to present for the Advisory Committee's consideration, at its September meeting in Seattle, a proposed Rule allowing bankruptcy estate funds to be invested routinely in money market funds comprised of United States Government debt instruments. Currently, on motion, larger debtors may utilize sophisticated investment alternatives. The proposed Rule would make available to middle sized and smaller bankruptcy estates, and bankruptcy trustees, the higher yields available to consumer investors in money market fund accounts. However, to assure the absolute safety of these funds, the proposed Rule would allow investments only in money market funds that hold debt instruments issued by the United States Government.

Section 345(b) of the Bankruptcy Code

The proposed Rule establishes an inexpensive procedure to obtain a higher yield on estate deposits, which is permitted by Section 345 of the Bankruptcy Code. Section 345 of the Bankruptcy Code was amended in 1994 to allow a bankruptcy court "for cause" to waive the requirement that estate investments be either FDIC insured, collateralized, or bonded. 11 U.S.C. §345(b). This reversed the ruling of In re: Columbia Gas Systems, Inc., 33 F3d 294 (3rd Circuit 1994).[1]

The justification for the statutory amendment was that large debtors, led by sophisticated financial personnel, can afford to undertake higher risks in pursuit of a "normal" investment program:

[1] H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (October 4, 1994); 140 Cong. Rec. H10, 767 (October 4, 1994).

> While [the requirement to collateralize or bond investments] is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.[2]

Since Section 345 was enacted, bankruptcy courts, upon motion, have allowed large debtors to avail themselves of high-yield investment opportunities by allowing the continuation of pre-petition "cash management procedures."

Smaller debtors, however, have been unaware or unable to benefit from the availability of investment vehicles like money market funds that are not, by any reasonable measure, "risky." To the contrary, as the materials we are submitting with this letter make clear, a money market fund that invests only in the United States government backed securities provides the same safety and security as would direct ownership of those securities, but also allows for immediate liquidity which avoids interest rate risk if an investment in a U.S. Security has to be sold to provide cash. Money market funds are used by small businesses and consumers on a daily basis across the nation. They provide for easy access to higher yield funds than could be accomplished by direct investment in the debt instruments. They have established a remarkable record of safety through three decades of use in the American economy.

The Proposed Rule

We propose a procedure to make these investments readily available, without having to seek case-by-case approval, to smaller business debtors and bankruptcy trustees. The proposed Rule, which is set forth in the materials we have provided, establishes that "cause" exists to dispense with the bonding or collateralization requirements of §345(b) of the Bankruptcy Code where money of the estate:

a. is invested in an open-end management investment company registered under the Investment Company Act of 1940 that is regulated as a "money market fund" pursuant to Rule R2(a)(7) under the Investment Company Act of 1940 and that has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's;

b. that invests exclusively in United States Treasury Bills and United States Treasury Notes owned directly or through fully collateralized repurchase agreements; and

c. that has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange;

d. provided that the debtor, or Trustee if applicable, has filed with the Court and the Office of the United States Trustee a statement identifying the fund and its certification, accompanied by its current prospectus.[3]

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[2] Id.

[3] As applied to Alabama and North Carolina, which are not currently within the jurisdiction of the United States Trustee Program, the statement would be filed with the Bankruptcy Administrator.

Investment Safety

We do not anticipate that this proposal will be controversial. We have submitted substantial documentation demonstrating the safety of money market funds over a decades-long period of the United States economy, including periods of financial turmoil, such as hyper-inflation and recession. The proposed Rule removes any remaining risk by insisting that a "Designated Fund" avoid even highly rated corporate debentures in favor of exclusive reliance on United States securities. Because a fund manager can match maturities up to anticipated fund needs, the effect of this proposed rule would be for smaller estates and bankruptcy trustees to have yields approaching those available on Certificates of Deposit without the need to "lock-up" the funds to get that yield.

The proposed Rule also is consistent with 28 U.S.C. § 2075 (the Rules Enabling Act) and case law interpreting the power to establish federal bankruptcy rules. Under 28 U.S.C. § 2075, the Supreme Court has the power to prescribe general rules of practice and procedure in cases under title 11. Federal rules may dictate practice or procedures in bankruptcy cases so long as they do not "abridge, enlarge, or modify any substantive right."[4] A rule is only *inconsistent* with federal rules and statutes if it alters aspects of the process which bear upon the ultimate outcome.

The proposed Rule does not does not enlarge or abridge any substantive right or change the operation of section 345 in any way. Instead, the proposed Rule would give its companion statute effect by providing an unambiguous means of establishing cause for the type of investments that section 345 was intended to enable. The Rule merely establishes one means of qualifying funds to constitute "cause" for not requiring a bond. The Rule does not propose to limit "cause" to investment in Designated Funds. Debtors still may argue that cause exists outside the grounds set forth in the proposed Rule, and Courts may still require a bond. In other words, the proposed Rule would preserve the Court's authority to consider any other grounds for cause to dispense with the bond requirement after notice and hearing as provided in the statute.

Conclusion

We are painfully aware that the Advisory Committee has a great deal to consider, in light of the enactment of BAPCPA. However, we believe this proposal will not raise substantial concern and provides the best kind of assistance to bankruptcy estates and their creditors.

We are prepared to meet with the Committee, and any Subcommittees which will be considering this proposal, at their convenience. We have had extensive and positive discussions with the Executive Office of the United States Trustee because of the role the U.S. Trustee program already has with respect to Section 345. We understand the EOUST would support the Committee's consideration of this proposal at its September meeting.

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[4] *Id.*; see also, *In re Caldor Corp.*, 303 F.3d 161, 170-71 (2d Cir. 2002).

Please contact me with any questions you may have. We will be available to meet with the Committee, or any members of the Committee, at your direction.

Respectfully submitted,

Matthew R. Goldman

cc: Clifford J. White, III, Esq.
Eugene F. Maloney, Esq.
Tom McDonald, Esq.
David B. Rivkin, Jr., Esq.

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BAKER
&
HOSTETLER LLP
COUNSELLORS AT LAW

TO: Advisory Committee on Bankruptcy Rules

FROM: Baker & Hostetler LLP

DATE: August 7, 2006

SUBJECT: Proposed Rule to Allow Bankruptcy Estates to Invest in U.S. Government Money Market Funds

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EXECUTIVE SUMMARY

Baker & Hostetler LLP recommends to the Advisory Committee on Bankruptcy Rules that it establish a new Bankruptcy Rule allowing Debtors in Possession and Trustees to invest estate funds in "money market funds" of U.S. Government debt. This will allow for greater yield on and greater ease in managing bankruptcy estate funds, so long as the fund has met certain standards which assure its safety. The proposed Rule would automatically establish "cause" to allow investment of estate cash in a money market mutual fund, without the need of posting a bond, if the Debtor or Trustee files a statement with the Court and the Office of the United States Trustee certifying that the fund invests only in U.S. Government-backed bills or bonds, and that the fund meets the designated standards.

Under this proposal, the cost and delay associated with bonding individual money market funds can be avoided, the enhanced yield and ease of investment in a money market fund can be routinely made available to bankruptcy estates, and the risk of harm or default can be eliminated. This will benefit smaller and mid-sized chapter 11 bankruptcy estates. It will also provide assistance to chapter 7 and chapter 13 trustees.

The proposed Rule, set forth below, would apply only to a "money market fund" that invests exclusively in United States Treasury Bills and United States Treasury Notes and that provides immediate liquidity to its investors. We have reviewed our suggestions with the Executive Office of the United States Trustees so as to assure that our proposals meet with their approval. We believe the proposal will be viewed by them as consistent with their authority.

PROPOSED RULE

RULE [ ] Investment in Money Market Funds

There is "cause" for relief from the requirements of Section 345(b) of the Bankruptcy Code where money of the estate is invested in an open-end management investment company, registered under the Investment Company Act of 1940, that is regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of

1940; so long as the debtor, or Trustee if applicable, has filed with the Court and the Office of the United States Trustee a statement identifying the fund and the fund's certification, which shall be accompanied by its currently effective prospectus as filed with the Securities and Exchange Commission, that demonstrate that the fund (1) invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements; (2) has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's; (3) has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange; and (4) has adopted a policy that it will notify its shareholder 60 days prior to any change in its policy (a) to invest exclusively in Treasury securities as described in (1) above or (b) to redeem fund shares in cash no later than the business day following a redemption request by the shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange.

DISCUSSION

Bankruptcy Code Section 345

Bankruptcy Code Section 345 governs investment of estate cash during the pendency of a bankruptcy case, authorizing deposits or investments that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposits or investment."[1]

For deposits or investments that are not "insured or guaranteed by the United States or by a department agency, or instrumentality of the United States or backed by the full faith and credit of the United States," Bankruptcy Code Section 345(b) provides that the trustee or debtor-in-possession must require from the entity with which the money is deposited or invested (1) a bond in favor of the United States secured by the undertaking of an adequate corporate surety or (2) a deposit of governmental securities pursuant to 31 U.S.C. § 9303.[2] The Court may, however, dispense with this limitation "for cause."[3]

The "for cause" exception was expressly established to help larger, more sophisticated debtors obtain better yields and ease of cash management. As the legislative history explains:

> Under current law, all investments are required to be FDIC insured, collateralized or bonded. *While this requirement is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.* This section would amend the Code to allow the Courts to approve investments other than those permitted by section 345(b) for just

[1] 11 U.S.C. § 345(a).
[2] *Id.* 31 U.S.C. § 9303 provides that where a person is required by law to give a surety bond, that person, in lieu of such surety bond, may provide a governmental obligation.
[3] 11 U.S.C. § 345(b).

cause thereby overruling *In re Columbia Gas Systems, Inc.*, 33 F.3d 294 (3d Cir. 1994).[4]

The Proposed Rule provides that trustees and debtors-in-possession may invest estate assets in money market funds that are comprised exclusively of United States Treasury Bills and United States Treasury Notes and satisfy certain other conditions (a "Designated Fund"), without moving for a waiver from the Court pursuant to Bankruptcy Code Section 345(b). The safety of these funds will be assured, and will be readily ascertainable by parties in interest and by the U.S. Trustees.

The Proposed Rule would make Designated Funds, and their corresponding benefits, more accessible in bankruptcy cases, without creating market or credit risk. This will especially benefit smaller estates which may have even greater need for the highest possible yield on estate funds than do larger sophisticated debtors in possession.

Overview of Money Market Funds

Investing in money market funds is a perfect option for preserving capital, eliminating the risk of "timing," and ensuring that the investment will always be completely liquid and safe. Money market funds, including Designated Funds, are open-end management investment companies registered under the Investment Company Act of 1940, as amended ("1940 Act"), that have as their investment objective generation of income and preservation of capital and liquidity through investment in short-term, high quality securities.[5] In recent years, the rate of increase in money market fund assets has been striking – in late May 2005, money market fund assets totaled $1.88 trillion,[6] compared to $902 billion at the end of 1996.[7]

Rule 2a-7 subjects a money market fund to a number of requirements designed to remove risk. For instance, a diversification requirement limits the fund's exposure to the credit risk of any single issuer.[8] In addition, money market funds may purchase only securities that are denominated in United States dollars, pose minimal credit risk to the fund, and are "Eligible Securities," as defined in Rule 2a-7(c)(3)(i). Moreover, Rule 2a-7 further provides that, in order to limit its exposure to interest rate risk,[9] a money market fund may not acquire any instrument having a remaining maturity of greater than 397 calendar days and may not maintain a dollar-weighted average portfolio maturity of more than 90 days. Finally, money market funds are subject to stringent portfolio liquidity standards: a money market fund is limited to investing no

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[4] H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10, 767 (Oct. 4, 1994); emphasis supplied.

[5] *Revisions to Rules Regulating Money Market Funds,* Investment Company Act Rel. No. 21837 (Mar. 21, 1996), 61 FR 13955, 13957 (Mar. 28, 1996) (*"Money Market Rule Revisions"*).

[6] *Mutual Fund Assets Increased in the Week,* Wall Street Journal (May 20, 2005).

[7] Investment Company Institute Mutual Fund Fact Book at 87-88 (42nd ed. 2002).

[8] The issuer diversification requirements do not apply with respect to a money market fund's holdings of government securities, because the Commission does not consider holdings of government securities to present significant credit risk. Rule 2a-7(c)(4)(i). The Rule's treatment of government securities is derived from Section 5(b)(1) of the 1940 Act, which excludes investment in government securities from the limitations imposed upon diversified investment companies with respect to investments in a single issuer.

[9] *Money Market Rule Revisions,* 61 FR at 13971.

more than ten per cent of its assets in illiquid securities.[10] The SEC considers a security to be illiquid if it cannot be disposed of within seven days in the ordinary course of business at approximately the price at which the fund has valued it.[11]

Designated Funds Would be the Equivalent of Direct Holdings of Government Securities

Concerns about credit, interest rate or liquidity risks are meaningless in the context of Designated Funds because no Designated Fund could invest in the types of instruments that create even limited difficulties for money market funds. Money market funds that invest exclusively in United States Treasury securities have never been required to purchase a portfolio security from the fund to preserve the fund's $1.00 share price.

General-purpose money market funds[12] have amassed an impressive record of safety over the past three decades. The relatively isolated circumstances in which a money market fund has experienced the potential for risk arose because of investments in: (1) second-tier commercial paper; or (2) adjustable rate securities in which the interest rate readjustment formulas resulted in the market values of the securities not returning to par at the time of an interest rate readjustment. In all but one such instance, to maintain their funds' stable net asset values, the funds' investment advisers purchased the distressed or defaulted securities from their money market funds at their amortized cost value (plus accrued interest), or contributed capital to the funds, to preserve the fund's $1.00 share price. [13] Again, designated funds would not face even these minimal concerns.

Benefits of the Proposed Program.

This proposal will allow holders of estate cash to get maximum yield on their funds, and yet have access to them within 24 hours. Presently, the party responsible for managing estate funds must either deposit them in low-yield insured depository institutions, or must amass the funds and place them in withdrawal-restricted assets. This places financial officers in the position of having to invest some of their funds in longer-term vehicles, to obtain a better yield, while having no yield on the short-term cash needed by a Debtor.

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[10] Investment Company Act Rel. No. 13380 (July 11, 1983), 48 FR 32555 (July 18, 1983) (adopting Rule 2a-7), at nn. 37-38.

[11] *Money Market Rule Revisions,* 61 FR at 13966.

[12] The term "general purpose money market funds" refers to money market funds that may invest in the full panoply of instruments permitted by Rule 2a-7.

[13] *Id.*, 61 FR at 13972 n. 162. One institutional money market fund holding adjustable rates notes, a series of Community Bankers Mutual Fund, Inc., liquidated in September 1994 at 96 cents per share. Press reports generally treated this liquidation as the first instance in which a money market fund had "broken a dollar." *Id.*

In a subsequent enforcement action, the Commission found that the fund's two portfolio managers had not assessed adequately the risks of investing a large portion of the fund's portfolio in such derivatives, in an environment of rising short-term interest rates. *In the Matter of Craig S. Vanucci and Brian K. Andrew*, Securities Act Rel. No. 7625 (Jan. 11, 1999). In a related enforcement action, the Commission also found that the fund's board authorized the fund to sell its shares while omitting to disclose, or while making false and misleading disclosure of, material facts concerning the percentage of illiquid securities in the fund's portfolio and the value of the fund's shares being sold. *In the Matter of John E. Backlund, John H. Hankins, Howard L. Peterson, and John G. Guffey*, Securities Act Rel. No. 7626 (Jan. 11, 1999).

Under the proposed procedure, the administrative burden of projecting when to remove cash from higher yield, longer-term assets into readily-available accounts can be dispensed with. Money market funds provide ready access at a higher yield than could be otherwise obtained. So long as the fund provider does not have to factor in the cost of providing a bond or insurance to the fund, the yields that can be provided to a bankruptcy estate can be relatively generous.

"The growth in business holdings of money funds is partly due to corporations' preference to outsource cash management to mutual funds rather than holding liquid securities directly."[14] Companies that purchase money market shares are able to obtain daily liquidity at par,[15] together with true daily choice, flexibility, and economics of scale that are unavailable through internal management of their liquid assets.[16]

Thus, while adopting the Proposed Rule would not subject estate funds to any increased risk, it would allow smaller debtors-in-possession and trustees to realize the benefits of money market funds with greater ease and at lower cost. In addition, debtors-in-possession and trustees currently investing in Designated Funds would not have to modify their existing cash management systems or move the Court for a waiver of the restrictions imposed by Bankruptcy Code Section 345.

Designated Funds Have Been Approved for Investment by Numerous Federal and State Agencies

Designated Funds and similar products now are used in a wide variety of applications as an efficient and safe alternative to direct investment in government securities. In particular, as summarized in Exhibit A attached hereto, numerous federal and state financial regulators (including the SEC), self-regulatory organizations, state legislatures, and federal courts have recognized investments in shares of such funds as the functional equivalent of investing directly in government securities for many purposes. Many of these are circumstances where applicable laws or regulations expressly require or permit the direct investment in government securities.

Examples of such circumstances include investment of the assets of national banks (Office of the Comptroller of the Currency), state-chartered banks (Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation), and federal credit unions (National Credit Union Administration); indenture trustees in the state of New York (see enclosure); customer funds held in custody by futures commission merchants and futures clearing organizations (Commodity Futures Trading Commission); margin collateral (Board of Trade Clearing Corporation, New York Mercantile Exchange, Chicago Mercantile Exchange, and the Options Clearing Corporation); assets of state and municipal entities; assets subject to trust indentures; and trust and other fiduciary assets (numerous state laws). Moreover, the Commission staff has authorized the pre-funded portion of an asset-backed issuance to be invested in money market mutual funds as an alternative to eligible financial assets that convert

[14] Investment Company Institute Mutual Fund Fact Book at 30 (42nd ed. 2002).
[15] In fact, the quality and liquidity of money market funds may exceed that of certain of the types of government securities. Indeed, money market funds attempt to maintain a stable net asset value per share of $1 and permit shareholders to purchase and sell in precise dollar amounts, whereas transactions in government securities take place only in large denominations and may cause a debtor to incur a loss when selling a government security.
[16] *See* Investment Company Institute Mutual Fund Fact Book at 30 (42nd ed. 2002).

to cash. Likewise, federal courts have ruled that states, for tax purposes, must treat distributions made by money market mutual funds holding Treasury Bills in the same manner as interest payments on directly held United States government securities.

The treatment accorded holdings of shares of Designated Funds and similar money market funds in these circumstances recognizes that such funds offer institutions a highly efficient and convenient mechanism for investing in government securities, with the safety of principal and daily liquidity comparable to that which they would achieve were they to invest in such securities directly. Permitting such indirect investment in government securities, as a functional equivalent of direct investment, has proven to be entirely consistent with the "safety and soundness" and other important policy objectives contemplated in laws and regulations that expressly permit or require institutions to invest in government securities.

The Proposed Rule Permissibly Supplements Section 345

Lastly, we believe that the proposed Rule permissibly supplements and furthers the purpose of Section 345, by providing a tangible means of demonstrating "cause" under the statute. This is a proper exercise of rule making power.

The proposed Rule is consistent with 28 U.S.C. § 2075 (the Rules Enabling Act) and case law interpreting the power to establish federal bankruptcy rules. Under 28 U.S.C. § 2075, the Supreme Court has the power to prescribe general rules of practice and procedure in cases under title 11. Federal rules may dictate practice or procedures in bankruptcy cases so long as they do not "abridge, enlarge, or modify any substantive right."[17] A rule is only *inconsistent* with federal rules and statutes if it alters aspects of the process which bear upon the ultimate outcome.

As discussed, supra, at Pages 2-3, the "for cause" exception of Section 345 was created to help larger, more sophisticated debtors obtain better yields and ease of cash management. Because the Bankruptcy Code provides no definition of the term "for cause," courts have flexibility in determining that standard.[18] Many courts have established by rule particular facts and circumstances that amount to "cause" for relief.

For example, under 11 U.S.C. § 1112(b), if a movant establishes "cause," a bankruptcy court "shall convert a case under this chapter to a case under chapter 7 or dismiss [the] case." Pursuant to Local Rule 9059.1 of the Bankruptcy Court for the Northern District of Texas, the "United States trustee may from time to time publish and file with the clerk guidelines on matters such as insurance, operating reports, bank accounts and money of estates and other subjects pertaining to the administration of chapter 11 cases." Under that local rule, *"[f]ailure to comply with the requirements of these guidelines may constitute cause justifying the dismissal or conversion of the case pursuant to 11 U.S.C. 1112(b)."* Similarly, under Local Rule 3016 of the Bankruptcy Court for the District of Maryland, a debtor's failure to file a plan or disclosure statement within the time set by the Court *"will constitute cause for dismissing the case* or converting the case to a case under Chapter 7 pursuant to Bankruptcy Code § 1112(b)(4)."

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[17] *Id.*; see also, *In re Caldor Corp.*, 303 F.3d 161, 170-71 (2d Cir. 2002).
[18] *In re Morris*, 155 B.R. 422, 426 (Bankr. W.D.Tex. 1993).

The Bankruptcy Court for the District of Vermont has an almost identical local rule. *See*, Vt. Loc. Bankr. R. 3017-2 (debtor's failure to file a disclosure statement and plan within the time fixed by the Court shall constitute cause for dismissal or conversion to chapter 7 under11 U.S.C. § 1112(b)(4)); *see also*, W.D.N.Y. Loc. Bankr. R. 6070 (debtor's failure in a chapter 11 asset case to file any required tax return promptly after filing the petition may constitute "cause" for dismissal or conversion of the case).

The District of Colorado has promulgated Local Rule 505, directing that a deficient case filing "shall constitute cause for dismissal pursuant to 11 U.S.C. 707(a), 1112(b) & (e), 1208(c)(1), and 1307(c)(1) & (9)." The Bankruptcy Court for the Central District of California has promulgated Rule 2072-1. Under this Rule, a notice of the filing of a bankruptcy petition must be given "to any federal or state court in which the debtor is party to pending litigation or other proceeding." Failure to provide such notice "may constitute cause for annulment of the stay imposed by 11 U.S.C. §§ 362, 922, 1201, or 1301."

The proposed Rule does not enlarge or abridge any substantive right or change the operation of section 345 in any way. Instead, the proposed Rule would give its companion statute effect by providing an unambiguous means of establishing cause for the type of investments that section 345 was intended to enable. The Rule merely establishes one generic form of qualifying fund the use of which would constitute "cause" for not requiring a bond. The Rule does not propose to limit "cause" to investment in Designated Funds. Debtors still may argue and establish, just as is the case today, that cause exists outside the grounds set forth in the proposed Rule, and Courts may still require a bond. In other words, the proposed Rule would preserve the Court's authority to consider any other grounds for cause to dispense with the bond requirement after notice and hearing as provided in the statute.

Authority for Participation by the United States Trustee Program

The United States Trustee Program has responsibility for ensuring that bankruptcy estates operate in conformity with section 345. The program we propose would establish a similar undertaking with respect to a Designated Fund.

Section 345 already establishes authority for the Office of the United States Trustee to approve corporate sureties which may provide a bond. 11 U.S.C. § 345(b)(1)(B). As discussed above, the 1994 amendments to the Bankruptcy Code added the final phrase of Section 345(b) in order to overrule *Columbia Gas*. *In re Service Merchandise Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (citing H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)).

The proposed program is consistent with the United States Trustees' general administrative function. Title 28 of the United States Code charges the Office of the United States Trustee with authority to "supervise the administration of cases" by, among other things, "monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress[.]" 28 U.S.C. § 586(a)(3)(G). The United States Trustee was established for the purpose of relieving bankruptcy judges of these administrative functions. *See, e.g., Matter of Crosby*, 93 B.R. 798 (Bankr. S.D. Ga. 1988) (citing H.R.Rep. 95-595, 95th

cong. 1st Sess. 100-15 (1977)). "Clearly the purpose of the program was and is to separate as much as possible the purely administrative functions performed by the Court from judicial functions[.]" Certification is an administrative process. *In re Melenyzer*, 142 B.R. 154, 157 (Bankr. W.D. Tex. 1991) (holding that the United States Trustee's certification of final report was an administrative process and was not appropriate subject for discovery relative to hearing on final report).

As the *Columbia Gas* decision itself observes, the United States Trustee program "greatly reduces the role of the bankruptcy judge with regard to such investment...in conformance with the general policy of the Bankruptcy Code to separate the bankruptcy court as a judicial body from involvement in the administration of the estate." *Columbia Gas*, 33 F.3d at 298 (citing 2 *Collier on Bankruptcy* ¶ 345.02, at 345-12 (Lawrence P. King ed., 15th ed. 1994)). The Third Circuit noted:

> [M]any of these duties have devolved on the U.S. Trustee. The nexus between the responsibilities of the U.S. Trustee and the investments of the assets of a debtor's estate is evidenced by the fact that former Rule 5008 dealing with such investments did not apply in districts where there was a United States trustee. Even more explicit is the statement of the Advisory Committee in 1991 that Rule 5008 was "abrogated in view of the amendments to § 345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees." Fed. R. Bankr. P. 5008 advisory committee's note (1991).

Id.

We have had extensive and positive discussions, including with respect to the proposed Rule, with the Executive Office for United States Trustees because of the role the U.S. Trustee program already has with respect to section 345.

CONCLUSION

Money market funds and Designated Funds in particular permit companies, especially smaller debtors, to benefit from economics of scale that are not available when they attempt to manage their liquid assets directly. The funds represent a safe, highly liquid asset with a stable value and have been widely approved by financial regulators, self-regulatory organizations, and state legislatures as an efficient alternative to direct investments in government securities. We recommend your consideration of this proposal, and stand ready to assist you in any way you require.

EXHIBIT A

Money Market Mutual Funds as Functional Equivalents of Underlying Portfolio Investments

#	Authority	Application	Date
1.	Office of the Comptroller of the Currency	Permits national banks to purchase, for their own account, mutual funds with portfolios limited to assets national banks can acquire directly.	Banking circular issued November 21, 1986.
2.	Board of Governors of the Federal Reserve System	Same with respect to state-chartered member banks.	Adopted the OCC approach by rule in 1998 (codifying earlier Fed interpretations).
3.	Federal Deposit Insurance Commission	Same with respect to state-chartered non-member banks.	Adopted the OCC approach in 1992.
4.	National Credit Union Administration	Same with respect to federal credit unions.	Rule adopted in 1997.
5.	Securities and Exchange Commission	Pre-funded portion of an asset-backed issuance may be invested in money market mutual funds as an alternative to eligible financial assets that convert to cash.	No-action letter, 1997.
6.	Commodity Futures Trading Commission	Customer funds in custody of futures commission merchants and futures clearing organizations may be invested in money market mutual funds, as well as U.S. Government securities and other approved investments.	Rule amended December 2000.
7.	Securities and Exchange Commission; Commodity Futures Trading Commission	Money market fund shares may be used to satisfy the required margin for security futures and related positions carried in a securities account or futures account.	Rules adopted August 2002.
8.	Board of Trade Clearing Corporation	In lieu of depositing original margins in cash and government securities, bylaws permit deposits of certain functionally equivalent investments, including approved money market mutual funds.	Bylaws amended July 2001.
9.	New York Mercantile Exchange	Clearing members may meet original margin calls by depositing cash and government securities or certain functionally equivalent investments, including approved money market mutual funds.	Rule adopted June 2001.
10.	Chicago Mercantile Exchange ("CME")	Clearing members may accept both cash and government securities as performance bond, as well as certain functionally equivalent investments, including approved money market mutual funds.	Rule revised October 2001.
11.	Options Clearing Corporation	Proposed rule would expand the types of "functionally equivalent" securities to include shares of money market mutual funds holding shares of "first tier" securities.	SEC published notice of rule proposal in January 2003.
12.	Federal Courts	States required to treat distributions made by money market mutual funds holding Treasury Bills in same manner as interest payments on directly-head U.S. Government securities.	Various.
13.	State Laws	Authorize investment in Government-only money funds as an alternative to direct investment in U.S. Government securities for investments of: • public funds by municipalities and other public entities; • trust and other fiduciary assets; • indenture trustees; and • miscellaneous entities.	Various.