# EXHIBIT 3

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July 27, 2009

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Room 920
New York, NY 10007-1312

Re: Securities and Exchange Commission v. Reserve Management Company, Inc. et al, No. 09-CV-4366 (PGG)

Dear Judge Gardephe,

We write on behalf of Banc of America Securities LLC ("BAS") in response to this Court's June 8, 2009 order inviting objections to the Proposed Order to Show Cause and Application for Injunctive and Other Relief and Approval of the Commission's Proposed Plan of Distribution, filed with the Court on May 26, 2009 by the Securities and Exchange Commission (the "SEC"), regarding the remaining assets of the Primary Fund. By way of background, BAS held 607 million shares of the Primary Fund, and properly submitted in good order requests for redemption of those shares on the morning and early afternoon of September 15, 2008. At that time, the net asset value ("NAV") was \$1.00 per share. BAS had a legal right to receive that value for each of the shares it redeemed and no order of the SEC prevented the Reserve Fund from paying that amount. Nonetheless, none of the proceeds from any of those requests for redemption was transmitted to BAS the next business day, as required by the Primary Fund

Prospectus (the "Prospectus"). BAS has brought an action in New York State Court against the Reserve Fund seeking the redemption payments it is owed.[1]

BAS opposes the SEC's proposal to distribute the remaining assets of the Primary Fund *pro rata* to all investors because it is unfair and inequitable. Section 25(c) of the of the Investment Company Act of 1940 (the "ICA"), which provides that the SEC can institute proceedings asking a Court to enjoin a proposed unfair and inequitable plan of distribution, does not give the SEC the right to force a reorganization plan that is inequitable or require the Court to give any special deference to the SEC's proposed plan. Rather, the Court must make its own judgment. *See* 15 U.S.C. § 80a-25(c). And, "[a] reasonable plan may consider the relative strength and values of different categories of claims." *In Re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004); *see also SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

The SEC's plan here does not appropriately take into account the relative strength and values of different categories of claims, but rather treats identically those who timely took action to exercise their contractual rights to redeem their shares and those who did not. BAS and the other "early redeemers" are not similarly situated to those who saw the NAV on September 15, were aware of market conditions that day, and nonetheless chose not to redeem. BAS exercised its rights under the Prospectus and thus – unlike those who did not redeem – is entitled as matter of law and contractual agreement to receive $1.00 per share. Federal law requires redemptions to be honored at the NAV next calculated, 17 C.F.R. § 270.22c-1(a), and the Primary Fund is contractually obligated to redeem BAS's shares within one business day and at the NAV next calculated, which was $1.00 per share. Paradoxically, the effect of the SEC's *pro rata* distribution is also to treat differently those who took action to redeem and received cash from the Primary Fund on September 15, 2008, and those, like BAS, who took the identical action and are still awaiting payment of the amounts reflected in their confirmation of redemption, further highlighting the inequitable nature of the SEC's plan.

Further, the SEC's plan implicates more than the private contractual relations between the various parties involved; it relates to the integrity of the financial markets for money market mutual funds and the Court's decision will have a profound effect on those markets. Section 1(b) of the ICA provides that the national interest and the interests of investors are adversely affected when investment companies fail to protect the preferences and privileges of holders of their outstanding securities. 15 U.S.C. § 80a-1(b)(3). One of those "preferences and privileges" is the privilege to redeem a share at the published NAV. That is a right that parties rely upon in deciding to invest in money market funds and it is a right that must be honored if those markets are to continue to flourish. It is inconceivable that Congress intended that a fair and equitable plan to equal a *pro rata* distribution based on an artificially identical NAV for all parties regardless of whether the parties are in a fundamentally different legal posture.

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1 BAS's state court action was subsequently removed and BAS's motion to remand is pending. BAS submits this objection without waiver of its remand motion and does not consent to the jurisdiction of this Court.

BAS respectfully submits that for the reasons stated above, along with the reasons expressed by similarly situated investors,[2] including that the Court should not impede a previously-filed state court lawsuit, the Commission's proposed plan of distribution should be amended to grant full redemption value of $1.00 per share to BAS, a claimant who took action to redeem Primary Fund shares on September 15, 2008, while the NAV remained at $1.00, but whose redemption requests remain unfulfilled.

Sincerely,

Lewis J. Liman

2 *See, e.g.*, objections submitted by Wal-Mart Stores, Inc. and the E*TRADE Entities.

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