

**MEMO# 26713**

November 21, 2012

# **ICI Comment Letter on European Commission's Consultation on UCITS VI**

[26713]

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TO: ICI GLOBAL MEMBERS

INTERNATIONAL COMMITTEE No. 46-12

INTERNATIONAL INVESTING SUBCOMMITTEE No. 9-12

MONEY MARKET FUNDS ADVISORY COMMITTEE No. 59-12 RE: ICI COMMENT LETTER ON EUROPEAN COMMISSION'S CONSULTATION ON UCITS VI

In July, the European Commission recently issued a consultation on UCITS VI (the "Consultation"). [\[1\]](#) This broad and wide-ranging Consultation covered a number of topics, including efficient portfolio management techniques, the regulation of money market funds, securities lending and repurchase agreements, and OTC derivatives. The Institute submitted a comment letter, which is attached and briefly summarized below. Our comment letter primarily addressed two areas: secondary market liquidity for exchange-traded funds ("ETFs") and money market funds.

## **Secondary Market Liquidity for ETFs**

The Institute's letter states that we do not support proposals to allow secondary market investors to redeem their UCITS ETF. We do not understand how an ETF could operate from a management or operational perspective if it provided investors with the ability to buy and sell shares intra-day on the market, as well as the ability to redeem single shares at the end of each business day directly from the ETF. Moreover, we remain deeply concerned about recent Guidelines adopted by the European Securities and Market Authority ("ESMA") that allow redemptions from a fund when the value of an ETF unit "significantly varies from its net asset value". [\[2\]](#) We do not support additional changes to the UCITS Directive on this issue.

## **Money Market Funds**

The Institute's letter notes that we remain committed to strengthening the resiliency of money market funds, including supporting rules designed to stabilize a fund's net asset value ("NAV"), and mechanisms to prevent systemic risk. We do not agree, however, that the term "shadow banking" accurately reflects the activities of money market funds and

attempts to regulate money market funds as credit intermediaries outside of the traditional banking industry are inappropriate.

U.S. money market funds are stringently regulated by the SEC and are governed by substantive provisions governing credit quality, liquidity, maturity and diversification. Further, the daily dividend feature combined with the short duration and strict valuation requirements of money market fund assets, vitiates the need for a “floating” NAV.

Similarly, the Institute does not agree with the Commission’s proposal for capital buffers in money market funds. While the potential for loss is remote, the cost of providing these capital buffers would be significant. These costs would raise internal expenses which would either have to be absorbed by the fund, rendering them economically unviable, or passed on to shareholders in the form of a lower yield. Either result would destroy the advantage that money market funds have over Treasury securities and would harm shareholders.

The Institute agrees with the Commission that the addition of specific liquidity requirements address the type of liquidity challenges faced by many money market funds during the financial crisis. Amendments to U.S. securities laws in 2010 added additional liquidity requirements that have had a transformative effect on money market funds. In addition, requirements for regular “stress testing” of a fund’s portfolio has improved oversight and early risk assessment. Finally, the 2010 amendments gave money market funds the ability to suspend redemptions to avoid “breaking the buck” when a run on the fund would result in a disorderly liquidation.

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#### [Attachment](#)

#### **endnotes**

[1] The Consultation is available at [http://ec.europa.eu/internal\\_market/consultations/2012/ucits\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/ucits_en.htm).

[2] See Letter from Karrie McMillan, General Counsel, to Steven Maijoor, Chair, ESMA, September 30, 2011, available at <http://www.ici.org/pdf/25540.pdf> (supporting certain disclosure proposals for UCITS ETFs and raising questions regarding possible changes to the redemption policies of UCITS ETFs) and Letter from Karrie McMillan, General Counsel, to Steven Maijoor, Chair, ESMA, March 30, 2012, available at <http://www.ici.org/pdf/26012.pdf> (expressing strong concerns regarding proposed guidelines related to either (i) a requirement for a fund or its management company to ensure investors can sell their shares whenever the market is open by requiring the fund or its management company to ensure market makers continue to transact, take action to replace market makers if they fail to do so or make arrangements so shares can be sold back to the fund or the management company; or (ii) require UCITS ETFs to accept redemptions directly from secondary market investors at any time).

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