

**MEMO# 26376**

August 7, 2012

## **European Commission Issues Consultation on UCITS VI**

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TO: ICI GLOBAL MEMBERS  
INTERNATIONAL COMMITTEE No. 27-12  
INTERNATIONAL INVESTING SUBCOMMITTEE No. 5-12  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 47-12 RE: EUROPEAN COMMISSION  
ISSUES CONSULTATION ON UCITS VI

The European Commission recently issued a consultation on UCITS VI, with comments due by October 18, 2012 (the “Consultation”). [\[1\]](#) This broad and wide-ranging consultation covers a number of topics, including efficient portfolio management techniques, the regulation of money market funds, securities lending and repurchase agreements, and OTC derivatives. It is intended to be complementary to the Commission’s work on shadow banking and the recently published European Securities and Markets Authority’s guidelines on ETFs and other UCITS issues. [\[2\]](#) The Consultation does not address the issue of complex v. non-complex UCITS.

The Consultation covers the following eight main topics and includes a number of open-ended questions under each topic. In many cases the Consultation seeks information about current fund practices.

1. Eligible assets and use of derivatives, including an evaluation of the current practices in UCITS portfolio management and assessment of certain fund investment policies. Among other questions, the Consultation asks whether there is a need to further develop rules on the liquidity of eligible assets and/or exposure to non-eligible assets, and whether derivatives should be distinguished based on the payoff.
2. Efficient portfolio management techniques (including securities lending and repurchase agreements), including an assessment of current rules regarding certain types of transactions and management of collateral. The Consultation’s questions include whether there is a need to further address issues or risks related to the use of EPM techniques, and whether criteria on the eligibility, liquidity, diversification and re-use of received collateral should be defined.

3. Over the counter (OTC) derivatives, including the treatment of OTC derivatives cleared through central counterparties, an assessment of the current framework regarding operational risk and conflicts of interest, and the frequency of calculation of counterparty risk exposure. Among other questions, the Consultation asks about the need to clarify the treatment of OTC derivatives cleared through central counterparties and what the appropriate approach would be. The Consultation also asks about the benefits and costs of requiring daily calculation of counterparty risk and issuer concentration.
4. Extraordinary liquidity management rules, including an assessment of the potential need for uniform guidance in dealing with liquidity issues. The Consultation's questions include whether there is a need to develop a common framework for dealing with liquidity bottlenecks in exceptional circumstances, and how "exceptional circumstances" would be defined. There also are questions about the use of side pockets and the need for liquidity safeguards in ETF secondary markets.
5. Depositary passport, including an assessment of whether to introduce a cross border passport for the performance of the depositary functions set out in the UCITS Directive. The Consultation asks about the advantages and drawbacks of a depositary passport, and also asks, if a passport were introduced, whether the depositary should be subject to a fully-fledged authorization regime specific to depositaries.
6. Money Market Funds (MMFs), including an assessment of the potential need to strengthen the resilience of the MMF market in order to prevent investor runs and systemic risks. Among the general questions on this issue, the Consultation asks whether there is a need for more detailed and harmonized regulation on MMFs, and whether such regulation should distinguish between different types of MMFs.

The Consultation then addresses constant NAV MMFs, including the use of amortized cost valuation and capital requirements. It asks whether CNAV MMFs should be subject to additional regulation or phased out, whether imposing capital buffers on CNAV MMFs would be appropriate, and whether valuation methodologies other than mark-to-market should be allowed in stressed market conditions.

In a section on liquidity and redemptions, the Consultation asks whether the current regulatory framework for UCITS is sufficient to prevent liquidity bottlenecks, and then seeks views on the imposition of liquidity fees, redemption restrictions, and/or liquidity constraints.

The Consultation also addresses the use of credit ratings by MMFs with respect to their investments as well as the rating of MMFs themselves. It asks, among other things, whether the definition of money market instruments in the UCITS Directive should be reviewed.

7. Long term investments, including an assessment of the potential need for measures to promote long term investments and of the possible form of such measures (including investments in social entrepreneurship). The Consultation asks whether there is a need to create a common framework dedicated to long-term investments for retail investors, and whether this could be accomplished through modifications to the UCITS rules or rather through a stand-alone initiative. The Consultation then asks questions about the mechanics of such possible funds, including diversification, use of leverage and minimum lock-up periods.;

8. Addressing UCITS IV, including an assessment of whether the rules concerning the management company passport, master feeder structures, fund mergers, and notification procedures might require improvements. Among other questions, the Consultation asks whether further alignment is needed between the AIFM Directive and the UCITS Directive in order to improve consistency of rules in the European asset management sector, particularly with respect to measures on organizational rules, delegation, risk and liquidity management rules, valuation, reporting, or calculation of leverage.

The Institute and ICI Global are reviewing the Consultation and intend to comment. We also intend to hold a member call to discuss the Consultation, details of which will be distributed at a later time.

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**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] The ESMA Guidelines on ETFs and other UCITS issues are available at  
[http://www.esma.europa.eu/system/files/2012-474\\_0.pdf](http://www.esma.europa.eu/system/files/2012-474_0.pdf). The Consultation is separate from the UCITS V proposals issued by the Commission in July, available at  
[http://ec.europa.eu/internal\\_market/investment/docs/ucits/20120703-proposal\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/ucits/20120703-proposal_en.pdf).

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