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Dear Niall

### **Response to the consultation on Asset Management Expert Groups' reports**

The Institutional Money Market Funds Association (IMMFA) welcomes the opportunity to comment on the European Commission's Expert Group reports.

IMMFA is the trade body that represents providers of triple-A rated money market funds. Our members' funds are typically authorised as UCITS with the objective of investing in a diversified portfolio of short-term money market instruments. Triple-A rated money market funds are operated to maintain a constant net asset value, and compete with bank deposits for the surplus cash of institutional clients such as corporate treasury departments, pension funds, local governments and financial institutions. Triple-A rated money market funds differ from other types of UCITS because they are subject to rigid and transparent guidelines set by independent ratings agencies which restrict their asset range, counterparty risk and choice of custodian in order to minimise credit and market risk. Total assets of IMMFA members' funds have grown to approximately US\$300 billion as at August 2006. You may obtain further information from our website, [www.immfa.org](http://www.immfa.org).

The reports note the success of UCITS in encouraging cross border provision of funds. Concomitant with that success has been the increase in usage of constant NAV money market funds as an effective alternative to bank accounts. This innovation assists the development of the single market by providing a simple but effective liquidity product throughout the European Union. Most corporate treasurers have long been aware of the advantages of money market funds and interest is increasing from financial firms as a result of the impending implementation of the Capital Requirements Directive.

We are supportive of the recommendations regarding market efficiency. We are also supportive of the development of an effective private placement regime. As part of this process, we consider that the Commission should consider broadly the range of funds within the European single market that have differing characteristics to traditional investment funds. To this end consideration should be given to the operation of money market funds and the role they play in providing effective alternative to bank accounts for European corporate and financial firms.

### **Getting funds to market – authorisation and notification**

IMMFA strongly supports streamlining the authorisation and notification process. Triple-A rated money market funds are possibly the least complicated and more secure type of fund

that can be authorised under the UCITS Directive, so we do not believe that delays in notification can be credibly related to any concern that host state regulators may have about the product.

There are clearly more effective methods to authorise a fund and to communicate that authorisation to another competent authority. The suggestion in the report to model UCITS product authorisation and notification on the Prospectus Directive would provide an effective approach and timeline benchmark. Similarly, providing efficient but realistic timelines for subsequent authorisations, such as the addition of sub-funds, would be welcome. As the competent host state authority's responsibilities lies solely with marketing issues, where a sub-fund is added or existing sub-fund is notified and where marketing does not change, we believe that there should be no necessity for extending the notification period or initiating a new period.

We strongly agree with direct competent authority to competent authority communication (or regulator to regulator - R2R) as advocated in the report. The current method of communicating via the UCITS is clearly not optimal and creates a number of structural inefficiencies.

As the Expert Group suggests, the effectiveness of the simplified prospectus needs to be reemphasised and we agree with the view that a straightforward 'summary prospectus' is the key tool to make well informed investment decisions.

Current practice from some competent host state authorities is to require the translation of broader range of documents than is required under the Directive. We believe translation of most documentation is primarily a commercial issue and has no effect on the quality of investor protection. Indeed, for professional clients who would be familiar with documents provided in an internationally accepted language, there may be no need or demand for translation. Thus, we agree with the recommendation that, as with the Prospectus Directive, the decision to make documents available in the language of the host State or a language customary in the sphere of international finance should be a decision for the fund provider.

## **Mergers and Pooling**

A fund merger and pooling framework would assist members generate economies of scale by rationalising their product range and maintaining product flexibility. As we noted in our Green Paper response, money market funds can be characterised as operating on the basis of generating significant economies of scale. Triple-A rated money market funds assets under management are larger than in other types of UCITS. A key point of encouraging economies of scale is the ability to merge funds easily, within the parameters of good investor protections and with full transparency. This should be capable of being accomplished without structural barriers or national obstructions.

IMMFA supports the proposals to facilitate cross border fund mergers and agree that it should be possible to merge compartments of umbrella funds. We further believe that the tax issues should be addressed so that investors do not systematically suffer adverse tax consequences from fund mergers. We agree with the Expert Group that minor modifications to the UCITS Directive are preferable to a wholesale rewrite.

Similar arguments apply for the development of pooling arrangements. IMMFA agrees that the ability for funds to pool their assets is a useful innovation that should be encouraged to enable effective economies of scale to be achieved.

### **Management company passport**

IMMFA members typically domicile their funds in either Ireland or Luxembourg, where they are required either to appoint a local management company or to arrange for the self-management of their funds. The costs of operating a management company or of self-managing a UCITS have increased following the introduction of UCITS III, which imposes significant new operational and capital requirements. Since the capital requirements of a UCITS III management company are based on funds under management, they particularly disadvantage the management companies of triple-A rated money market funds which typically have greater funds under management than other types of UCITS, and may therefore precipitate a move towards self-management. Because many of those operational and capital requirements are also performed back at the 'head office' of the firm that sponsors the UCITS, this results in duplication and wasted expenditure. We believe that reducing duplicative requirements is essential to increasing efficiencies and is supportive of the recommendations regarding the management company passport.

### **Depositaries**

We can see the potential benefits in allowing flexibility for depositaries. We support facilitating cross-border delegation and/or sub-custody arrangements and concur with Expert Group recommendations allowing branches of EU established banks to act as depositary for locally domiciled funds and allowing delegation of custodial function to licensed custodians located elsewhere in the EU.

We would note that while there may be a case for harmonising capital requirements for depositaries, we have not identified a demand from our members for the harmonisation of oversight arrangements. Currently, the requirements on depositaries to oversee the fund are effective and set at an appropriate level. We believe that any use of a depositaries passport should not see a reduction in their oversight abilities.

### **Private placement**

We would like to remind the European Commission that private equity funds and hedge funds do not constitute the whole universe of funds that may wish to use private placement rules. Harmonised as well as non-harmonised funds could avail themselves of a private placement regime to improve the efficiency of distribution, and this should not be forgotten when considering the benefits of harmonising private placement rules.

We agree with the comment from the Private Equity Expert Group report that encourages EU institutions and member states to consider establishing, in non-legislative form, a common understanding of private placement. We would re-emphasise the view from our Green Paper response that the Commission should prioritise developing a harmonised private placement regime.



Although our members' funds are normally constituted as UCITS, they do not necessarily need to avail themselves of the right to be publicly marketed, because the market for triple-A rated money market funds consist of institutions for which it is often more appropriate to approach on the basis of a private placement. From our perspective, a harmonised private placement regime need only encompass 'qualified investors', since triple-A rated money market funds are sold almost exclusively to institutional investors. Private placement to retail investors, which may raise concerns about consumer protection and would need significant consideration as to the benefits, could be left to Member States.

IMMFA requests that the Commission consider the issues set out above when progressing its work in this area. We would like to re-emphasise the comments made in our Green Paper response on 'investability' by clients, ie the ability of investors to purchase the units of UCITS which are marketed to them. We believe that triple-A rated money market funds offer clients greater choice without concomitant increase in risk and expanding ability to use such funds would provide a significant benefit to customers.

We would welcome the opportunity to explain the operation of money market funds in more detail. We would be very pleased to meet to further explore these issues should clarification be required.

Yours sincerely,

Gerard Fitzpatrick  
Secretary General, IMMFA