

8 April 2009

By email: markt-g3@ec.europa.eu

Mr Emil Paulis
Internal Market and Services DG
European Commission
B – 1049 Brussels
Belgium

Dear Mr Paulis

Directive 1997/9/EC on Investor Compensation Schemes: Call for Evidence

The Institutional Money Market Funds Association (IMMFA) are grateful for the opportunity to comment on the call for evidence relating to investor compensation schemes.

IMMFA is the trade association representing the promoters of triple-A rated money market funds¹ and covers nearly all of the major promoters of this type of fund outside of the USA. Triple-A rated money market funds are brought primarily by institutions to manage their liquidity positions and not for 'total return' investment purposes. They are used as an alternative to bank deposits by many investors as they offer a practical means of consolidating and outsourcing short-term investment of cash. Total assets in IMMFA members' funds as at January 2009 were in excess of €426 billion. You can obtain further information on triple-A rated money market funds from our website, www.immfa.org.

We note that the call for evidence includes a specific section on the treatment of money market funds. We are fundamentally opposed to any suggestion that investors in a money market fund should be entitled to compensation for capital losses arising from investment risk. We note that it has previously been a mainstay of the Commission's approach to financial regulation that investors should not be protected from investment risk. We urge the Commission to continue this approach.

A money market fund is designed to provide security of capital and liquidity. However, a money market fund is an investment product. The prospectus of any money market fund makes clear that the risk associated with the product is borne by the investor; there is no guarantee or insurance, and whilst the intention may be to maintain a constant net asset value (NAV), there is no assurance that this will in practice happen. The value of a share in a money market fund may go down as well as up, and the investor may not get back the amount originally invested.

¹ References in this letter to money market funds means funds rated, specifically, AAAm by Standard & Poor's, Aaa/MR1+ by Moody's and AAA/V1+ by Fitch Ratings, that price on an amortised basis.

This is true of any investment product. The fact that a money market fund seeks to provide security through the maintenance of a constant NAV does not change the fact that the risk remains that of the underlying investor; the product is therefore consistent with all other investment products in this regard. To provide compensation for capital loss arising from investment risk is diametrically opposed to the essence of an investment product, i.e. that the investment risk is carried by the investors in the product. The investor must accept the risk associated with the product before an investment is made, and the decision of whether to invest in this or any other investment product should not be based on whether any compensation will subsequently be available should a capital loss materialise.

The call for evidence identifies that the main purpose of the directive is to protect investors' money and financial instruments where insolvency or default events result in the inability of an investment firm to return them to (essentially retail) investors.

If the directive is amended to provide compensation for losses arising from investment risk, this would fundamentally change the purpose of the directive. Further, a precedent would be set in that compensation would be available to investors when a loss arising from an investment risk materialised.

We note reference is made to the temporary guarantee program implemented in the US to protect investors in US money market funds in the wake of the Lehman Brothers bankruptcy. You may be aware that the US mutual fund industry, as represented by the Investment Company Institute, were opposed to an open-ended guarantee which was originally contemplated². The ICI were concerned about the prospect of market disruption through significant flows of money into guaranteed money market funds from other sources of non-guaranteed money.

A similar situation would exist if compensation is available for money market fund investors. The call for evidence questions whether compensation should be available to avoid competitive distortions between different types of savings or investment products. However, if compensation were extended to money market funds, this would create a competitive distortion when compared with other investment products. This would fundamentally alter the market in that there would be a significant possibility that savvy investors would shift investment from other funds where compensation was not available to money market funds. It cannot be the intention of the Commission to instigate such a change.

In addition, the availability of compensation to investors would have to be funded. As identified in the call for evidence, the funding generally comes from contributions from those institutions participating. With regard to a money market fund, this would have to be from the fund itself. Money market funds are not priced to accommodate any such contribution, and for them to have to pay such, would radically alter the pricing structure of the fund, to the detriment of the end investor. Again, it cannot be the intention of the Commission to instigate such a change, especially one which would have such an adverse impact on consumers.

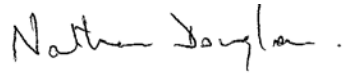
Irrespective of its objectives, an investor should only invest in a money market fund if he accepts the risk associated with the product. If the investor is unable to accept the risk, that investor should utilise a different product. The onus is therefore on the fund manager to provide the investor with sufficient information and in a suitable format to allow the investor

² See http://www.ici.org/pdf/ppr_09_mmwg.pdf, pages 64-65.

to determine the risk that is associated with the product. The work currently ongoing on the Key Information Document should address this issue of risk disclosure.

We would welcome the opportunity to discuss these matters with you further.

Yours sincerely

A handwritten signature in black ink, reading "Nathan Douglas". The signature is written in a cursive, flowing style with a period at the end.

Nathan Douglas
IMMFA Secretariat