



23 March 2018

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By email to: [cp18-04@fca.org.uk](mailto:cp18-04@fca.org.uk)

Dear Mike,

**CP18/4: The European Money Market Funds (MMF) Regulation**

The Depository and Trustee Association ("DATA") represents depositaries and trustees of UK based investment funds, including Open Ended Investment Companies, Unit Trusts and Authorised Contractual Schemes, including those which are Money Market Funds.

DATA welcomes the FCA's overall approach of limiting its Handbook changes to removing provisions which conflict with the Money Market Funds Regulation (MMFR) and amending any rules for Money Market Funds (MMFs) which conflict with the MMFR. However, we do have concerns on some of the detailed changes outlined in CP18/4. In particular, the proposed rules will have the effect of extending the oversight obligations of depositaries in respect of MMFs beyond those for other types of authorised funds. The proposed rules will also have the effect of limiting the ability of managers of MMFs to use important investor protection mechanisms such as suspension and deferred redemption, which we do not believe is intended by the MMFR.

DATA's detailed responses to the questions raised in the consultation are in the attached annex. Please do not hesitate to contact me if you would like to discuss any of the points we have raised.

Yours sincerely

Darren Lewis  
DATA Chairman

## Annex

### **DATA Response to FCA CP18/4 – Implementation of the European Money Market Fund Regulation**

#### **Q1: Do you agree with our overall approach to amending the Handbook in the light of the MMF Regulation coming into force?**

The FCA's overall approach appears to be to limit the changes required to the Handbook to those it believes are strictly required to implement the MMFR. DATA agrees with and supports this overall approach. However, we do have comments on some of the detailed changes outlined in CP18/4, particularly in respect of the Handbook changes in relation to depositaries of MMFs. We list these points in our response to Q2.

#### **Q2: Do you have any comments on the detailed changes that we are proposing to make, as set out in the appendix?**

While we support the overall approach of the FCA in its implementation of the changes required in light of MMFR, in some cases the effect of the detailed changes goes beyond what is required to implement the MMFR.

##### *Investment Powers and other provisions of MMFs*

DATA supports the FCA's proposal to remove COLL 5.9. The requirements of this section derive from the CESR Guidelines on a common definition of MMFs (CESR 10-049), which is being superseded by the MMFR. This section of COLL will therefore be redundant upon the implementation of MMFR.

##### *Depositary Requirements*

A particular concern for DATA are the proposals for COLL 6.6.4R(1)(f) and COLL 8.5.4R(2)(g). The wording "and where applicable, the Money Market Fund Regulation" is ambiguous and has the effect of extending the depositary's oversight responsibilities beyond what is required for authorised funds to cover the entirety of the MMFR. We believe the intention of the FCA was that this should only apply to the equivalent provisions of the MMFR relating to investment and borrowing, dealing, valuation, pricing and income – this is what is implied in paragraph 3.5 of CP18/4.

DATA requests that the proposed COLL 6.6.4R(1)(f) be amended to state "for a regulated money market fund captured by this chapter, the provisions of the Money Market Fund Regulation that apply to the functions referred to in (a) to (e)." and for the proposed COLL 8.5.4R(2)(g)(iv) "for a regulated money market fund captured by this chapter, the provisions of the Money Market Fund Regulation that apply to the functions referred to in (i) to (iii)".

##### *Suspension of Dealing*

The effect of the proposed rule change to COLL 7.2.1R(1) would be to remove the availability of managers of VNAV MMFs to suspend dealing, due to the fact the MMFR is silent on suspension of dealing, and restricts the ability of Public Debt CNAV and LVNAV MMFs to do so in all but a limited number of circumstances. We do not agree that restricting the ability of managers of MMFs to suspend dealing as in the proposed rule COLL 7.2.1R(1) is either necessary or desirable. The ability to suspend redemptions is a critical tool for protecting the interests of investors and it is important that managers retain the ability to suspend dealing where this is necessary for such investor protection.

Article 34 of the MMFR specifies circumstances where Public Debt CNAV and LVNAV MMFs should consider suspension as a possible measure, and also the circumstances where the regular deployment of suspension will result in the MMF becoming a VNAV. Article 34 of the MMFR does not apply to VNAV funds, so this article cannot be relied upon to provide suspension as a liquidity management tool for VNAV funds. Nor does Article 34 or other

provisions in the MMFR restrict or exclude the use of suspension in other circumstances, eg VNAV funds being suspended under the existing UCITS provisions.

The MMF relies on the UCITS and AIFM Directives to provide the fund structure, and is clear that with the exception of the investment power restrictions (in the case of UCITS), the provisions in the UCITS and AIFM Directives are expected to apply (Article 7 of the MMFR). Both of these directives provide for the possibility of suspension (Articles 45 and 84 of the UCITS Directive and Article 46 of the AIFM Directive), which has not been disapplied by the MMFR. As such, we believe the ability of managers of MMFs to suspend dealing in wider circumstances can, and should be, retained.

DATA therefore calls on the FCA to not to proceed with the change to COLL 7.2.1R (1). Instead, the FCA should amend the rule to indicate that Public Debt CNAV and LVNAV MMFs are also able to suspend dealing in the circumstances detailed in Article 34 of the MMFR.

#### *Deferred Redemption*

DATA does not agree with the proposed dis-application of COLL 6.2.21R to MMFs, or the proposed guidance in COLL 6.2.22G(2). Article 34 applies only to Public Debt CNAVs and LVNAVs only, and specifies a redemption gate of 10% limiting the units to be redeemed to 10% of the shares for up to 15 days as one of the measures that should be considered in the event that weekly maturing assets fall below 30% and net redemptions exceed 10%.

The MMFR does not exclude the possibility of deferred redemption/redemption gates being applied in other circumstances, in particular by VNAV funds. We therefore do not believe COLL 6.2.21R should be disapplied for MMFs (as in the proposed rule COLL 6.2.1R(2)), but amended to refer to the longer redemption gate available (and required) for Public Debt CNAV and LVNAV MMFs. We would also suggest that the proposed guidance in COLL 6.6.22G(2) be amended to state that Article 34 requires a redemption gate be one of the measures considered by Public Debt CNAV and LVNAV MMFs under certain circumstances.

#### *Types of MMFs*

Paragraph 2.7 incorrectly states that all three types of MMF provided for in the MMFR may be short-term MMFs or standard MMFs. Article 25(3) confirms that standard MMFs may only take the form of VNAV MMFs<sup>1</sup>.

#### *Dilution Adjustment*

DATA does not offer a view on the FCA's interpretation of the MMFR in respect of whether this permits the application of a dilution adjustment, other than to note the importance of anti-dilution measures to protect investors in the fund.

**Q3: Are there any Handbook provisions relating to money market funds, or otherwise relevant to the implementation of the MMF Regulation, that we should consider amending?**

#### *Pricing and Valuations*

In respect of valuations, the FCA is correctly proposing to disapply or amend many of the valuation rules in COLL 6.3 for MMFs to avoid conflicts with the MMFR. However, the FCA has not proposed disapplying COLL 6.3.5R(2), which requires prices to be calculated and published to four significant figures. This rule conflicts with Articles 30(2), 31(2) and 32(2) of the MMFR, which require that unit prices be rounded to the nearest basis point or its equivalent when the NAV is published in a currency unit. This rule should also be disapplied for MMFs to avoid a conflict with the MMFR.

#### *Disclosure requirements*

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<sup>1</sup> Article 25(3) prohibits standard MMFs from taking the form of Public Debt CNAV or LVNAV MMFs

The Consultation does not appear to have considered the changes required to fund documentation (the instrument of incorporation, prospectus, periodic reports, and key investor information document) that will be required to comply with the MMFR. DATA suggests consideration should be given to reflecting the requirements in Articles 16, 17, 26, 34 and 36, or at least referencing these, in COLL 3.2, 4.2, 4.5 and 4.7 as applicable.

*Duties of the depositary and authorised fund manager: investment and borrowing powers*

DATA recommends that COLL 6.6.14R(1), which requires the authorised fund manager to avoid any provision in the instrument of incorporation or prospectus as referred to in COLL 5.2.4R and COLL 5.6.4R, should also reference the proposed new provisions in COLL 5.2.4AG and COLL 5.6.4AG.

*Investment Funds Sourcebook (FUND)*

We query why Handbook changes to accommodate the MMFR are only being applied to COLL, and not FUND. The MMFR applies to all money market funds that are established, marketed or managed in the EU as MMFs, including UCITS and AIFs, and in the case of the latter apply to both authorised and unauthorised AIFs. We would therefore expect to see a reference to MMFR in FUND.

*Qualifying Money Market Funds (QMMFs)*

We do not agree with the FCA's approach to QMMFs, and do not believe this is compatible with the MMFR. While we recognise this definition continues to exist under MiFID, the FCA's approach suggests that these are a distinct type of MMF. This is not the case – the MMFR provides for only the Public Debt CNAV, LVNAV and VNAV structures, and the COLL rules should reflect this.

*BIPRU*

DATA agrees with the FCA's objective of ensuring that liquidity requirements for firms are not increased as a result of aligning the definition of a "designated money market fund", as used in BIPRU 12, with the MMFR. However, we are not convinced this definition is unaffected by the MMFR since the regulation affects all MMFs established or marketed in the EU. DATA recommends that the definition should be reviewed to ensure it does not conflict with the MMFR, specifically paragraphs (b) to (d) of the definition, and if necessary be brought into alignment with the MMFR. If this is required, further changes should be considered to BIPRU 12 to meet the FCA's objective of ensuring that liquidity requirements for firms are not increased.

**Q4: Do you have any comments on our proposed charges for authorising money market funds?**

DATA does not offer any comment on the charges proposed for authorising MMFs under the MMFR. However, the draft rules in Part 2 of FEES 3 Annex 2R includes the statement applying the fees for MMFs in each of the sections for ICVCs, Authorised Unit Trusts and Authorised Contractual Schemes in the same box as for QIS. This implies that all MMFs, whether structured as UCITS, NURS or QIS, will pay the higher authorisation charges that apply to QIS, rather than the equivalent authorisation charges for UCITS and NURS. From the commentary in paragraph 4.5 we do not believe this is the FCA's intention. Assuming this is the case, we suggest the statement applying the fees for MMFs is repositioned so it is clear how it is intended to apply.

Paragraph 4.5(3) states that MMFs will need to be authorised under the MMFR before 21 January 2019. This is incorrect – Article 44 requires that an existing UCITS or AIF must submit their application for authorisation from its national regulator by 21 January 2019, rather than be authorised by this date. The article requires the regulator to complete its assessment and issue a decision on authorisation within two months. DATA suggests this is clarified in by the FCA in its commentary on the final rules for the avoidance of doubt.

**Q5: Do you have any comments on our proposal to include money market funds in the structure of fees for collective investment schemes?**

DATA does not have detailed comments on the ongoing fee structures proposed, although as a matter of principle DATA believes fees for all products, including MMFs that are AIFs, should be structured to avoid cross-subsidy of some products by other products.

**Q6: Do you agree with our cost benefit analysis for changes to the Handbook linked to the MMF Regulation?**

DATA believes the costs to depositaries of the implementation and ongoing compliance with the MMFR may be more than estimated in the cost benefit analysis in Annex 2. While DATA recognises these costs largely arise from the implementation of the European regulation rather than the Handbook changes proposed by the FCA, we encourage the FCA to ensure that its Handbook changes are kept only to those strictly required under the MMFR to minimise any additional costs for depositaries.