

28 January 2015

Jonathan Faull
Director General
DG Financial Stability, Financial Services and Capital
Markets Union
European Commission
SPA2 – Pavillon
Rue de Spa 2, 1000 Brussels
Belgium

Dear Mr Faull,

Issue 179: Money Market Funds

The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.

The Committee has previously drawn your attention to its views on issues of legal uncertainty arising from the European Commission's proposal for a Regulation on money market funds (the "Proposed Regulation") which were set out in a paper published under the title "Discussion of legal uncertainties arising from the proposal for a Regulation on Money Market Funds" (the "FMLC Paper"). The compromise text for the proposed Regulation, published by the Council of the EU on 10 November 2014, clarifies some of the issues raised in the FMLC Paper. The Committee considers it, however, important to comment on a remaining issue of legal uncertainty regarding the liability of managers of money market funds ("MMFs") under Article 6(4) of the Regulation.

The FMLC welcomes the amendments to the Proposed Regulation introduced by the compromise text. In particular, the Committee considers that several issues of legal uncertainty have been resolved with the proposed deletion of the first limb of Article 30(1) of the Regulation which requires a CNAV MMF to establish and maintain a NAV buffer amounting at all times to at least 3% of the total value of the CNAV MMF's assets and the exclusion of repurchase agreements from an MMF's prohibited activities under Article 8(2).

The Committee, however, takes the view that legal uncertainty remains with regards to the issue of liability of MMFs managers introduced by Article 6(4) of the Proposed Regulation. Article 6(4) provides

The manager of the MMF shall be responsible for ensuring compliance with this Regulation. The manager shall be liable for any loss or damage resulting from non-compliance with this Regulation.

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The FMLC Paper set out the Committee's concerns regarding this provision. Among them was the concern that Article 6(4) introduces a new European standard of liability giving rise to uncertainty about the way the standard is to be applied within national legal systems in the absence of a developed jurisprudence.

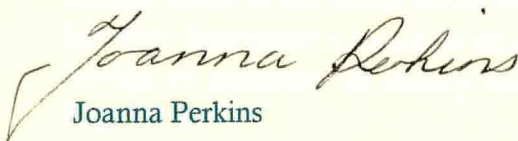
In your letter to the FMLC, dated 27 June 2014, you responded that this article does not seek to introduce a new European standard of liability which would oblige Member States to align national legal systems, but rather the aim of this provision is to ensure that an MMF complies at all times with the proposed Regulation by preventing a manager from contractually discharging itself from its obligations. To that end, the liability of the managers will continue to be governed by the applicable national laws.

The Committee is reassured by your response but remains concerned that the wording of Article 6(4) does not optimally reflect the approach outlined in your letter *viz.* that the purpose of this article is to prohibit an MMF manager from excluding his/her liability under a contractual arrangement.

The Committee suggests that it would bring greater clarity were the provision to be amended to provide that the "manager may not exclude liability arising under national law for loss or damage that results from non-compliance with the Regulation". The FMLC recommends that this issue be addressed in order to eliminate or mitigate any future misunderstanding.

I and Members of the Committee would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me to arrange such a meeting or should you require further information or assistance.

Yours sincerely,



Joanna Perkins

FMLC Chief Executive