Remarks of The Honorable Paul S. Atkins
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<<Ceci n’est pas une banque.>>
(“This is not a bank.”)

It is an honor and pleasure for me to be here in Brussels to speak to you at this important summit today. I thank the Investment Company Institute (ICI), European Fund and Asset Management Association (EFAMA), and their international partners for extending me the kind invitation to be here.

As you undoubtedly know, it is the height of the election season in the United States; the first Presidential debate was held last night. Much is at stake in this process – for Americans as well as for those abroad.

There is no doubt about it: Americans are preoccupied with the state of the economy and the election. For the past three years, to the dismay of, I believe, most Americans, those in power in Washington have focused on issues that are not fundamental to the causes of the financial crisis or to the economic problems that arose from that crisis. Thousands of billions of dollars have been borrowed and spent, with little concrete result and lingering despair among the unemployed and underemployed. Thousands of pages of new laws have been enacted, leaving much concern, confusion, and uncertainty in their wake. Tens of thousands of pages of new rules have been promulgated by a gaggle of agencies trying to make sense out of that legislation, but their work in interpreting the legislation is still years from being complete; in the meantime they have created yet *more* uncertainty as to how the rules themselves will be finalized and interpreted. On top of all of this, hundreds of pages of court decisions have already been written to address challenges to some of these rules, resulting so far in high-profile defeats for the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) because of deficiencies in the rulemaking process. There are – and will be – more court challenges to come.

In Europe, likewise, thousands of pages of new rules have arisen as a result of a mind-numbing list of directives and regulations: EMIR,[1] AIFMD,[2] UCITS IV,[3] Solvency II,[4] Basel III,[5] CRD III,[6] etc. – so many that it takes a huge lexicon and spreadsheet merely to keep track of the progress of these efforts through both European and national channels.

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[1] Regulation 648/2012, OTC Derivatives, Central Counterparties and Trade Repositories, 2012 O.J. (L 201) 1.
[2] Directive 2011/61, Alternative Investment Fund Managers, 2011 O.J. (L 174) 1.
[3] Directive 2009/65, Coordination of Laws, Regulations and Administrative Provisions Relating to Undertakings for Collective Investment in Transferable Securities, 2009 O.J. (L 302) 32. Supplementary legislation UCITS V was proposed this year and UCITS VI is currently in consultation.
[4] Directive 2009/138, Taking-Up and Pursuit of the Business of Insurance and Reinsurance, 2009 O.J. (L 335) 1. The Directive is scheduled to come into full effect in January 2014.
[5] *See generally* Basel Comm. on Banking Supervision, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (June 1, 2011), *available at* http://www.bis.org/publ/bcbs189.pdf.

With all these changes and the resulting increases in the regulatory burden, is there any doubt as to why we are experiencing lackluster economic performance on both sides of the Atlantic?

This, then, brings me to my main topic for today, one of the most important in financial regulation, not just for the investors and market participants directly affected, but for its larger policy implications. The topic, of course, concerns the ill-considered proposals that would drastically change the regulation of money market mutual funds (MMMFs) in the name of "stability" of the financial system. These proposals would actually undermine the strength, competitiveness, and responsiveness of the financial system and hurt investors of all types along the way. Europe, as much as the United States, has been a focus of this debate.

It is strange that we should even be discussing this. After all, the SEC already pursued a successful post-crisis reform of MMMF regulation just two years ago.[7] The Committee of European Securities Regulators (CESR), now known as the European Securities and Market Authority (ESMA), likewise issued Guidelines in 2010[8] that clarify the distinction between short-term funds, with strict limits on their investments, and other money market mutual funds. Nevertheless, the push for further regulation continues. In the United States, this takes the form of three main proposals: (1) to in effect create a new pricing regime just for MMMFs (as opposed to other mutual funds) that would eliminate penny rounding and thus the steady net asset value (NAV) model; (2) to restrict redemption of shares; and (3) to impose some form of "capital buffer" on MMMFs. Together, these proposals form a lethal cocktail that would, at a minimum, sharply diminish the value of these products to both investors and issuers of credit, and, ironically, move massive sums of cash to less regulated asset classes posing *greater* systemic risk – a point SEC Commissioner Luis Aguilar has highlighted.

Three SEC Commissioners have now announced that they do not favor Chairman Schapiro's proposal for greater regulation of MMMFs. They have openly criticized a flawed process and the lack of solid information and independent analysis of the data – any of which should be a fatal deficiency in a regulatory proposal, particularly one so far-reaching as this. That should have settled matters, as the SEC is the traditional and statutorily competent regulator of these funds. Unfortunately, we see a continued effort from other regulators, led by banking agencies, the Federal Reserve and Treasury, to consider these proposals through the Financial Stability Oversight Council (FSOC), a new body of regulators set up by the Dodd-Frank Act. Just last week, Treasury Secretary Geithner called on the FSOC to act on MMMF regulation.[9] Chairman Schapiro is even supporting this effort, which would effectively reduce her own agency's authority despite the wishes of a majority of commissioners. I had never thought that I

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[6] Directive 2010/76, Capital Requirements for the Trading Book and for Re-Securitisations, and the Supervisory Review of Remuneration Policies, 2010 O.J. (L 329) 3. Supplementary legislation CRD IV will implement the requirements of the Basel III agreements in the European Union.

[7] Money Market Fund Reform, 75 Fed. Reg. 10060 (Mar. 4, 2010) (codified at 17 C.F.R. pts. 270, 274) (amending SEC Rule 2a-7).

[8] Comm. Eur. Sec. Regulators [CESR], *CESR's Guidelines on a Common Definition of European Money Market Funds*, CESR Ref. 10-049 (May 19, 2010), *available at* http://www.esma.europa.eu/content/Guidelines-Common-definition-European-money-market-funds.

[9] Letter from Timothy Geithner, Sec'y of the Treasury, to Members of the Fin. Stability Oversight Council (Sept. 27, 2012), *available at* http://www.treasury.gov/connect/blog/Documents/Sec.Geithner.Letter.To.FSOC.pdf.

would see the day that an SEC chairman would be unwilling to form a consensus among her colleagues and then resort to an outside body to try to impose its will on a heretofore independent agency.

Internationally, as you know, the International Organization of Securities Commissions (IOSCO) is taking the lead in seeking to formulate proposals for further regulation of MMMFs.[10] But Europe has been quite active as well, with the European Commission Green Paper on "shadow banking" in March,[11] a conference in April, and the open consultation on UCITS VI, which includes MMMF regulation.

Proponents of these changes have mounted a campaign with many high-profile supporters, notably Secretary Geithner, Federal Reserve Chairman Ben Bernanke, and William Dudley and Eric Rosengren, Presidents of the New York and Boston Federal Reserve Banks, as well as some economists in universities.

A common theme of these bank regulators and academics is a focus on the story of 2008 and the notion that money market mutual funds are somehow susceptible to "runs." This theme is reflected in European documents as well, including those from the European Commission, the U.K. Treasury, and the European Systemic Risk Board in its June study.[12] The Boston Federal Reserve also produced a study on sponsor support for funds, alleging that without support from fund sponsors, some funds had been at risk of falling below their target $1.00 NAV and asking whether MMMFs, "as currently structured, are really pass-through entities."[13] EFAMA, in contrast, is correct to note that the true intermediary function of these funds is providing effective, short-exposure diversification for retail investors.

In reality, in 2008 only one – to repeat, *one* – fund of the 700 registered with the SEC fell below a dollar NAV ("broke the buck"), because of overexposure to the securities of Lehman Brothers. And its investors received over 99 cents on the dollar (many equity investors in 2008 could only dream about such a return). In reality, investors invest in MMMFs for a host of reasons, but mostly because they seek a conservative, liquid investment vehicle. This applies to individual investors as well as to large institutional investors; I would have thought regulators should be concerned with protecting the options available to each type of investor.

The extensive involvement of many banking regulators in this securities market issue clearly points to one goal: a desire to have the Financial Stability Oversight Council designate MMMFs as "systemically important financial institutions," thus subjecting them to a myriad of

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[10] These proposals have now been formally issued. *See* Int'l Org. Sec. Comm'rs [IOSCO], *Policy Recommendations for Money Market Funds: Final Report*, IOSCO Doc. FR07/12 (Oct. 9, 2012), *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf.

[11] Commission Green Paper on Shadow Banking, COM (2012) 102 final (Mar. 19, 2012), *available at* http://ec.europa.eu/internal_market/bank/docs/shadow/green-paper_en.pdf.

[12] Eur. Systemic Risk Bd. [ESRB], *Money Market Funds in Europe and Financial Stability*, ESRB Occasional Paper Series No. 1 (June 2012), *available at* http://www.esrb.europa.eu/pub/pdf/occasional/20120622_occasional_paper.pdf?52e14172dee1f6bd6a397339f3a0d151.

[13] Steffanie A. Brady, et al., Fed. Reserve Bank of Boston, The Stability of Prime Money Market Funds: Sponsor Support from 2007 to 2011 7 (2012), *available at* http://www.bos.frb.org/bankinfo/qau/wp/2012/qau1203.pdf.

new requirements, prudential standards, and supervision by the Federal Reserve. Of course, there is a large difference between the bank regulatory model, led by the Federal Reserve and which focuses on safety and soundness of the banking system, and the SEC's statutorily mandated focus on the protection of investors, capital formation, and competition – which is one important reason why MMMF regulation should remain with the SEC.

Designation of a non-bank financial company as systemically important involves a poorly defined balancing act in which the FSOC is to look at several factors, including a company's leverage, off-balance-sheet exposures, liabilities (including the degree of the company's reliance on short-term funding), the "nature, scope, size, scale, concentration, interconnectedness, and mix" of the company's activities, and any other risk-related factor that the FSOC may come up with, either by regulation or on a case-by-case basis. Nor is this merely an American concern: foreign non-bank institutions, too, may be caught in this process. On a global level, regulators are collaborating on their own "G-SIFI" designations, which primarily implicate international banks.

Yet how often have politicians and regulators in Washington ignored cause and effect? On several past occasions, familiar to all of you, rules claiming to promote financial stability were simply not aimed at the correct risk points of the system. There is a serious risk that the same thing will happen here with respect to MMMFs.

Quite simply, the new proposals for regulation of money market mutual funds are nothing less than a radical departure from established principles of regulation. There are many powerful arguments in favor of the current structure of MMMFs, ignored by the Federal Reserve and its allies. I'd like to review briefly the advantages of MMMFs to the financial system and then offer my analysis of what's really behind this push for more regulation.

We all know that overregulation can "kill the goose that laid the golden egg." Now, few investors would confuse money market mutual funds with the fabled golden egg – they are designed to offer only modest returns to investors – but they are a critical part of the American and European financial systems. They offer a way for families and businesses to save, invest, and manage their money, as an alternative to an exclusive reliance on banks. Sharply limited in their investments by the SEC's Rule 2a-7, MMMFs focus on conservative investment strategies and preservation of capital, offering a valuable choice for investors in a challenging economy.

Equally important, they are an essential tool of capital formation for businesses and a vital source of short-term financing for governments. In the United States, these funds are critically important to financing for state and municipal governments. As a number of former state officials recently wrote to the SEC, MMMFs are the largest purchasers of debt used to finance community projects, help governments manage cash flow, and invest in projects that generate jobs. It's also worth remembering that the U.S. Treasury uses MMMFs in this way as well – during the 2008 crisis, investors flocked to funds that were heavily invested in Treasury bonds.

The regulatory structure of MMMFs has been an important part of this success. The new regulations in 2010 made MMMFs even stronger and provided greater confidence – but unlike bank deposits, no formal guarantees – to investors of all types, from individuals to large institutions. These reforms raised the quality of securities in these funds, increased transparency, and shortened the maturities of permissible investments. Strengthened by these reforms, money market mutual funds emerged unscathed from last year's U.S. credit rating downgrade and European financial instability. As EFAMA noted in its response [14] to the European Commission's Green Paper, euro-area systemic risk concerns in May 2010 were higher than in September 2008 – and yet there were no "runs" on MMMFs.

In discussing the proper regulation of MMMFs, it is first important to underscore a simple truth: that money market mutual funds are not banks – nor are they "shadow banks" – and thus should not be regulated as banks. To borrow a famous phrase from the American baseball coach Yogi Berra, the similarities between banks and money market mutual funds are different. It is as basic as the difference between equity and debt. It is simply not accurate to write, as a columnist recently did in the *Financial Times*, that these funds merely "aim to replicate the safety of short-term bank deposits without the regulatory burdens."[15] The two institutions serve different purposes and are thus naturally structured – and regulated – differently.

Banks are highly leveraged, with medium- to long-term asset structures, embedded moral hazard, and opaque obligations. Their job is to underwrite and embrace a range of credit risks – making collateralized, essentially leveraged loans in the hope that gains from fees and interest payments will exceed loan losses, to the benefit of their shareholders. MMMFs are – by design and by regulation – risk-averse and transparent, and their business model does not depend on the use of leverage. No mutual fund may borrow more than one-third of its total assets; in practice, MMMFs borrow virtually nothing.

It bears remembering that despite deposit insurance, heightened capital requirements and other regulation, 450 banks have failed in the United States since 2000, at great cost to the federal insurance fund and, ultimately, consumers of banking system products and services.

Investors in MMMFs are shareholders, not depositors. Bank depositors essentially have a contractual right to receive interest on their account; fund shareholders benefit (or lose) from the fund's total performance. Bank depositors do not benefit from transparency of a bank's actions; fund shareholders can view detailed and regularly updated information on a fund's portfolio holdings. Bank depositors look to the government for security of their investment; MMMF shareholders have no such guarantee (even the fund sponsors specifically say that they do not guarantee any investment) and at the end of the day, shareholders have only a pro-rata claim on the assets of the fund.

Thus, I take exception to the characterization put forth by Mssrs. Dudley and Rosengren and some academic economists of so-called "runs" on MMMFs. The issue comes down to the definition of a "run." The fact is our fractional reserve banking system, backed ultimately by the taxpayer, creates a shaky house in which depositors' confidence in the safety and soundness of

[14] Letter from Eur. Fund & Asset Mgmt. Ass'n to Eur. Comm'n (May 13, 2012) [hereinafter Letter from EFAMA], *available at* http://www.efama.org/Publications/Public/EFAMA RESPONSE TO THE EUROPEAN COMMISSION GREEN PAPER ON SHADOW BANKING.pdf.

[15] Jonathan Guthrie, *Money Market Funds are Left Foundering*, Fin. Times, Sept. 4, 2012.

alternative financing chains, which complement bank lending and are of direct benefit to the real economy."[17]

So, taking a step back, why are we even talking about the supposed systemic risk of MMMFs? There seems to be the impression that these funds precipitated the financial crisis in the wake of the bankruptcy of Lehman Brothers and the subsequent troubles of the Reserve Primary Fund. The implication is that MMMFs could cause the next financial crisis. Treasury Secretary Geithner and former Treasury Secretary Paulson tell tales of facing a calamity when they saw precipitous redemptions from MMMFs and the freezing of the commercial paper market.

But is that an accurate view of the facts? Georges Simenon's Inspector Maigret would tell us that eyewitness evidence, particularly if offered by an interested party, is often unreliable and is perhaps the *least* reliable evidence. Rather, finding the truth takes investigation, forensic testing, and patient study and work. Recently I was reminded of this fallibility of human observation in times of stress when a former Washington-area police chief described how several eyewitnesses sent police far off the trail in looking for the perpetrator of the sniper attacks a decade ago, because the witnesses all remembered a getaway car, which in fact never existed. Sadly, the police were stymied until they had a breakthrough from their logistics analysis.

Thus, regardless of the conclusions of some participants about the causes of the financial crisis, dispassionate study and analysis after the fact is vital. The three SEC commissioners objecting to further MMMF regulation are veterans of the financial crisis. One of them in fact was with Secretary Paulson at Lehman Brothers that week of 15 September 2008, when he was an SEC staff member in the Division of Trading and Markets. Their impressions are different from those of the bank regulators. For my part, I was a member of the Congressional Oversight Panel for the Troubled Asset Relief Program (TARP), and the data that were available to us do not support the version of history that would blame MMMFs for the events of that week.

The financial crisis was a crisis of the banking system. Scholarly analyses have demonstrated that the supposed "run" on MMMFs was really a vote of no-confidence in bank-sponsored commercial paper. In an interesting twist, it was actually the superior risk and credit management of MMMFs that brought the bank balance sheets into question. In order to meet the high credit-quality standards required by the SEC's Rule 2a-7, MMMFs over the years had demanded and received credit and liquidity enhancements in the form of guarantees from banks for the securitized instruments that banks were selling through their off-balance-sheet special-investment vehicles (SIVs). When the crisis hit in 2007, the banks could no longer keep these SIVs off their balance sheets because of the guarantees. This was one of the factors that undermined the confidence of the market in bank financial statements.

These good credit and risk management practices of MMMFs are perhaps a reason that a recent study by Federal Reserve economists listing interventions by MMMF sponsors since the

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[17] Michel Barnier, Eur. Comm'r for Internal Mkts. & Servs., Towards Better Regulation of the Shadow Banking System (Apr. 27, 2012), *available at* http://ec.europa.eu/commission_2010-2014/barnier/headlines/speeches/2012/04/20120427_en.htm.

crisis began cites only about a dozen instances of default in securities held by all MMMFs during the study period, out of thousands and thousands of securities held by the industry.

A primary factor of the 2008 financial panic was the federal government's sudden, unexpected, and inconsistent actions intervening in Bear Stearns, Fannie Mae, and Freddie Mac to support creditors, but then allowing Lehman to fail. This was the shock to the system. Hedge funds, mutual funds, and other institutional investors had taken comfort in the earlier actions but were caught short by Lehman. An analysis by the firm Treasury Strategies,[18] and similar work by the ICI under Brian Reid, show that it was not Lehman or the Reserve Fund that caused the panic, but the events surrounding the unexpected, late-night government rescue of AIG. First the company, credit rating agencies, and even the U.S. Treasury asserted publicly that AIG was sound – and then mere hours later the Treasury announced that it would pour 85 billion dollars into AIG.

The assets facing the most difficulty at this time were bank and financial commercial paper, not most corporate or government debt – yet still, only one MMMF "broke the buck" in 2008. Much is made of the Treasury guarantee program *forced* on the industry in 2008, which amounted to $150 billion in guarantees for a $2 trillion industry. I do not believe that the guarantee program had a meaningful effect on investor behavior, simply because of the small size of the program and its structural restrictions. In fact, the guarantee was never invoked by any money market mutual fund.[19] But let us be clear: the purpose of this guarantee was to address a liquidity crisis on behalf of banks, not to promote the protection of investors.

Sadly, the same principle of the SEC overlooking its investor protection mandate seems to be at work today regarding MMMFs (to say nothing of the detrimental effects on capital formation and competition). As my former SEC colleague and now Commissioner Dan Gallagher recently said, "[t]his whole exercise has been about the role that money market funds play in the short-term funding markets on which banks rely . . . . It was never really about investors."[20]

A similar analysis holds true with regard to more recent events in Europe. The assumption that these funds are vulnerable to runs is simply unproven, because there is no evidence for it. As EFAMA notes, many investors reduced their holdings of MMMFs in 2010 and 2011, thanks in part to competition from bank deposits and diminished returns, but "[t]here is no evidence, however, that investors redeemed preemptively from their funds to be on the side of caution. What is certain is that MMMFs were able to cope with the withdrawals without being forced to sell securities at fire-sale prices."[21]

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[18] *See* Treasury Strategies, Dissecting the Financial Collapse of 2007-2008: A Two-Year Flight to Quality (2012), *available at* http://www.sec.gov/comments/4-619/4619-188.pdf.
[19] Press Release, U.S. Dep't of Treasury, Treasury Announces Expiration of Guarantee Program for Money Market Funds (Sept. 18, 2009), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg293.aspx.
[20] Joshua Gallu & Robert Schmidt, *SEC's Gallagher Calls for Floating Price for Mutual Funds*, Bloomberg News, Sept. 27, 2012, *available at* http://www.bloomberg.com/news/2012-09-27/sec-s-gallagher-calls-for-floating-price-for-money-market-funds.html.
[21] Letter from EFAMA, *supra* note 14, at 20.

President Dudley of the New York Federal Reserve cites an analysis of the U.S. Treasury's Office of Financial Research showing that about 100 MMMFs were at potential risk if "any one of their top 20 borrowers were to default."[22] But he misses the point: President Dudley persists in looking back at what *could have happened* in 2008 and not at the current landscape following the 2010 SEC rule changes. With these rule changes, the SEC has imposed even stricter diversification exposure limits on MMMFs on top of the historically negligible loss experience. MMMFs are actively managed and their credit analyses have proven successful for decades.

It seems deeply unfair to blame MMMFs for rational (and mandated) risk-averse behavior in their *un*willingness to lend to certain commercial paper issuers at a time when banks themselves were often unwilling to lend to one another, as we have seen in the wake of the rate-fixing LIBOR scandal.

The MMMF industry has a successful business model – a liquid, high-grade credit asset, with 100% unleveraged equity offering modest returns. To their own discredit, banks have now become dependent on this model rather than on their own model of taking deposits and making longer-term loans. It should not be the case that by virtue of banks' own improvidence, another successful industry must be subordinated to bank-like regulation that is wholly inappropriate for its asset class and to the detriment of its investors.

What, then, is really going on?

The reason for this excessive focus on MMMFs seems clear: the Federal Reserve would like to regulate them because banks have become reliant on the MMMFs' business model to provide short-term financing of their operations.

Stated plainly, the Federal Reserve has an institutional bias towards bank regulation and is seeking to regulate MMMFs because banks and their affiliates are significant issuers of commercial paper, and MMMFs are major investors in commercial paper. Thus, the Federal Reserve is hardly a neutral observer but is, in this instance, one bureaucracy seeking to expand its regulatory authority at the expense of other agencies without sufficient (or any) justification.

In fact, if one looks at all of the Federal Reserve's arguments in favor of "reform," one must conclude that these arguments would apply equally to banks. Essentially unlimited deposit insurance is about to be repealed in the United States, potentially subjecting assets over $250,000 to panicked selling. Banks are susceptible to runs, and depositors have an incentive to be the first to run. Banks and bank regulators should therefore look to clean up their own house first before seeking to assert jurisdiction over a competitor with a different business model. Yet because it is politically untenable to support the notion that banks that are "too big to fail" might be "too big to manage safely and soundly," the Federal Reserve is seeking to act against money market mutual funds in an effort to assure a source of liquidity for these outsized institutions.

[22] William C. Dudley, *For Stability's Sake, Reform Money Funds*, Bloomberg News, Aug. 14, 2012 (citing Office of Fin. Research, Annual Report (2012)), *available at* http://www.bloomberg.com/news/2012-08-14/for-stability-s-sake-reform-money-funds.html.

Very similar concerns apply in Europe, and there is a need for deep caution as the regulatory process in Europe moves forward.

In this more complete picture of the financial system, rather than MMMFs somehow forming an "unstable" part of a "shadow" banking system, as the Federal Reserve and several European institutions portray, the reality is quite different: banks themselves are the major players in this "shadow" system, and MMMFs are really the equivalent of banks' depositors. Just as depositors do not guarantee the survival of banks, neither should MMMFs, though the Federal Reserve's favored reforms would mean that MMMFs would essentially become guarantors of banks and short-term credit markets – all under the watchful eye of bank regulators rather than securities regulators.

Rather than attacking MMMFs, the better course is, as I have outlined today, to take a closer look at the actual source of systemic risk in 2008. In so doing, one would naturally discover that the proposed reforms are futile in addressing the nature of systemic risk (and actually heighten systemic risk by encouraging would-be investors in MMMFs to put their assets into bank accounts, thus making large banks even bigger).

Yet despite all this, President Dudley wrote that "I seriously doubt that the reforms I propose would lead to the demise or even the radical restructuring of the money-market-mutual fund industry."[23] I think he's dead wrong, but in any event, this assertion is nothing more than what I call "regulation by guessing." I fought against this type of "regulation" at the SEC, and I will continue to fight against it now that I am back in private life.

I believe strongly that regulation should be subject to the rule of law, not the rule of man. Thus, in the United States, our rulemaking process is subject to notice and comment and to the principle that the benefits of the rule must outweigh the costs. We cannot have rulemaking by instinct, or a vague sense that one person's intuition is better than another's. The process must be grounded in empirical evidence, or else the courts will rightly throw out the rules, as they already have done with some SEC and CFTC rules. The studies produced so far by staff of the SEC and the Federal Reserve are poorly done, internally inconsistent, and simply erroneous in their conclusions. This is an embarrassing situation and one sharply and rightly criticized by the three dissenting SEC Commissioners.

We are in Belgium, the home of Magritte, whose famous *"Ceci n'est pas une pipe"* reinforced the reality that a painting of a pipe is not the same as a pipe. We need a modern Magritte to show financial regulators a painting of a money market mutual fund prospectus and inscribe *"Ceci n'est pas une banque."* Bank regulation and the proper regulation of money market mutual funds each have their places and should not be confused. There is simply no reason to apply a bank regulatory model to an equity product or for the Federal Reserve, the FSOC, Financial Stability Board, IOSCO, or the G20 to interfere in the workings of a product that has provided a safe, reliable vehicle for investors around the world for over four decades – and yes, in virtually every instance, even during the recent financial crisis.

[23] *Id.*

This is a time for caution. As the ESRB noted in its June paper,[24] it could conduct further analysis on the role of these funds in providing finance to the economy. Three Commissioners of the SEC have also called for further study – not least a study of the actual impact of the 2010 reforms – before hasty action that could seriously harm the process of capital formation. Commissioner Aguilar is correct to worry that the SEC proposal "will be a catalyst for investors moving significant dollars from the regulated, transparent money market fund market into the dark, opaque, unregulated market." A loss of transparency is hardly a way to diminish systemic risk.

The FSOC, IOSCO, and other regulatory bodies should listen to the concerns of the three SEC Commissioners who have decided that a second round of regulation of MMMFs is both unjustified and unwise. There is no reason to disrupt a market that has performed well over forty years – the unpredictable consequences of such action could actually increase risk in the financial system.

The Hon. Paul S. Atkins served as a Commissioner of the Securities and Exchange Commission from 2002-2008. He currently serves as CEO of Patomak Global Partners, LLC, in Washington, and as a Visiting Scholar at the American Enterprise Institute for Public Policy Research.

[24] *See* ESRB, *supra* note 12.