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BVI[1] position on the ESRB recommendation on leverage and liquidity in investment funds

Recomendation A (liquidity management tools): In general, we welcome the proposed approach. It is important that all liquidity risk management tools set out in IOSCO's report should be made available to funds. General guidance on EU-level on how to implement such tools could be helpful for management companies. However, there is a need for a principle-based approach and, in every case, it should be at the discretion of the manager of the funds which tools they want to use because of very different fund types and structures. It is important to state that liquidity management depends on the types of assets, investors, investment strategies, markets, and possible national legal or contractual restrictions under the investment funds' rules for changing investment strategies. The use of liquidity management tools should be made dependent on concrete circumstances and should vary according to the nature, scale and investment strategy of the investment fund. As a last resort, the redemption should be suspended under the precondition that no other alternative is available under the fund rules or other potential liquidity management tools are considered to be inappropriate.

Recommendation B (additional liquidity provisions for AIF with a large portion of investments in inherently less liquid assets): In our view, there is no need for additional requirements related to open-ended AIF which hold a large proportion of their investments in inherently less liquid assets. The AIFMD already requires a strict and efficient liquidity management process. Hence, common requirements in managing liquidity risks of investment funds and in using liquidity management tools (as a general rule) are much more important. As an example, the German legislator has responded to the crisis by implementing new legal liquidity management tools for open-ended property investment funds. We also see no need for an abstract classification of the liquidity of inherently less liquid assets or asset categories. In particular, it should be avoided that a new ESMA list sets too strict binding requirements on liquidity analysis of assets. Otherwise we see the danger that the management company might not be able to react to changes in the market and they could make decisions with some of evidence of "herd behavior" with further impact to new (systemic) risk. Such requirements would also pose administrative burdens for the management companies. Therefore, it is important that liquidity management should be based on a case by case assessment.

Recommendation C (stress testing): Within the EU and Germany, asset managers are already required to perform strict liquidity management including liquidity stress tests for each individual fund. These requirements are sufficient, suitable and reasonable. Those requirements are incorporated in liquidity based stress tests and represent an integral part of the internal risk control system. However, we support to establish ESMA guidelines on stress tests limited to fund level and to requirements for internal organisation such as reporting channels and responsibilities. However, whether the design of a stress test is appropriate depends on the business model and investment strategy of the investment fund. Therefore, the design of stress test scenarios as well as their frequency should be tailored to the individual investment funds. Therefore, the published BaFin recommendations on liquidity stress tests could be a good example for ESMA stress test guidelines.[2]

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

[2] Available under the following link: https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2017/meldung_171208_liquiditaetsstresstests_en.html.

Recommendation D (UCITS reporting): We welcome the proposal to establish a harmonised UCITS reporting framework across the Union. However, as we understand ESRB's approach, ESRB recommends taking into account the reporting requirements under the MMFR. Unfortunately, the MMF reporting templates are yet not implemented and the UCITS reporting templates are not harmonised on an EU-wide level which may need some analysis to identify the common core elements of all UCITS reporting templates in the member states. Moreover, the reporting requirements of the MMFR shall apply from 21 July 2018. However, according to ESMA's timetable, the managers should be able to send the quarterly reports only by October/November 2019. With regard to the timetable recommended by the ESRB, the Commission is requested to deliver a report on the implementation of the UCITS reporting recommendations by 31 December 2020. We are very concerned about possible kind of double reporting and lot of additional administrative burden. In view of a reformed UCITS reporting, we should request the Commission to review the MMFR reporting in general and to align it with a new reporting template for all investment funds, at least for UCITS. This could also mean that the starting point of the MMFR reporting must be postponed.

Moreover, in establishing a new UCITS reporting, it is of utmost importance to use the same reporting standards as those established under the AIFMD. The implementing work for an AIF or AIFM reporting is already done and the standards are well known by the management companies. In any case, it must be avoided that one single investment fund has to report twice: (1) depending on the type of the MMF, with a harmonised reporting template under the AIFMD or a reporting template established by different national authorities under the UCITS Directive or a harmonised UCITS reporting template and (2) with a separate MMF report template with in part identical or similar data which are already provided by the AIFMD or UCITS template.

Recommendation E (macroprudential tool to limit leverage in AIFs): In general, we welcome the ESRB's invitation to analyse possible systemic risks of AIFs within the EU. The already implemented AIFMD reporting is designed to provide adequate findings in this regard. Therefore, as a first step, ESMA should be called upon to analyse the already reported data of AIFs. Only in the case that there is a need for more action, macroprudential leverage limits could be an instrument to overview systemic risks. However, we disagree with the general ESRB statement that the instruments given in Article 25 AIFM are not used by NCAs and ESMA. This does not apply for Germany, in particular, the use of leverage is limited by legal requirements as a result of the micro-prudential supervision (such as legal limits for the use of derivatives and borrowing agreements). According to a survey within our membership in 2016, the exposure of nearly all German AIFs relating to borrowing arrangements and derivative instruments (with hedging and netting) does not exceed leverage on a substantial basis (three times the fund's net asset value). Moreover, all German AIFs observe the UCITS limit on global exposure to derivative instruments. The studies of the ECB and DNB, OeNB and the UK cited by the ESRB in Annex II (pages 46-48) do not represent the German AIF market and their inherent risks. Therefore, it must be avoided to set new leverage limits or risk indicators for reasons of macroprudential supervision but with an effect that NCAs would be required to set these limits/indicators in their own supervision for individual funds. We therefore should continue to work closely together with ESMA.