

BVI's position on the ESMA consultation on Draft technical advice on commercial terms for providing clearing services under EMIR (FRANDT)

We¹ welcome ESMA's work to provide further technical advice to the EU Commission on the FRANDT system. We would like to provide the following general comments without answering specific questions:

We strongly support within EMIR Refit the option to relieve Small Financial Counterparties (SFC) with a limited clearing volume from the clearing obligation by introducing a clearing threshold. We strongly confirm the evidence provided within the EMIR Refit process and this consultation paper that for the smallest financial counterparties with a limited clearing volume such as many UCITS/AIFs it is economically unfeasible to fulfil the clearing obligation. We welcome the new legal requirements within EMIR Refit that clearing members and client of clearing members should provide such a service under fair, reasonable, non-discriminatory and transparent commercial terms (FRANDT), which takes SFC requirements into considerations.

The vast majority of regulated (German) investment funds (UCITS/AIF) belong to the new clearing category "Small Financial Counterparty". Only a few funds are above the EUR 8 billion thresholds calculated individually at fund level and are therefore classified within category (2). Our members with a limited volume of clearing activity face generally difficulties to find clearing members willing to set up legal and operational arrangements with SFC funds, accessing a CCP. The negotiation power of Small Financial Counterparties is limited when interacting with clearing members. Furthermore, many clearing members are less willing to offer client clearing services beyond their most important and biggest clients largely due to the stringent capital requirements applicable to them (e.g. BCBS Leverage Ratio).

Most clearing members do not offer a cost-effective client clearing model which provide a viable solution to our small and medium-sized member firms. Due to the low number of transactions and the limited clearing volume executed by our small and medium sized members, using a clearing member will be disproportionately expensive as high basic fees are charged independently of the transaction fees. In this context we share ESMA's findings that the total cost of clearing differs and depends on several factors including compliance with the regulatory requirements and fees charged that incorporate for instance on-boarding fees, license fees, fees per cleared transactions, booking fees etc. Furthermore, we embrace ESMA's separations of four different group of fees (please consider p. 11 in combination with chapter 6.1). Prices for clearing services will principally need to differentiate based on volume, trading patterns and further elements such as counterparty risk, collateral, and the level of standardization.

In the context of developing a suitable EMIR FRANDT rules system we would like to reiterate our position that the cost for the usage of financial market data by the Buy-Side has increased substantially by data providers (DP) and by Market Data Distributors (MDD). In practice, the use of financial market data has considerably changed and increased over the past decades largely driven by regulation and

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. Asset Managers 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 111 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



automation along the value chain of asset management. This development includes the trading and clearing of (OTC) derivatives. More and more (OTC) derivatives are standardized and are traded and cleared via electronic trading venues and CCPs thereby requiring the Buy-Side to consume more data provided by market infrastructure and other reference (e.g. OTC derivative identifiers such as the ISIN provided by ANNA DSB) and market data providers or distributors. More and more data are consumed and their use has changed with the drive towards electronic trading and settlement since the nineties. Back then derivative traders largely consumed financial market data on screen (“display”) and downloaded necessary transaction data “locally” into individual user applications.

We strongly encourage ESMA and the EU Commission to develop a well-balanced FRANDT system which offers incentives especially to small and medium sized Asset Managers to use more client clearing services. Improving financial stability overall with increased use of clearing, hinges on the ability also of SFC to access a CCP via a clearing broker based on an economical viable solution. Such services need to be based on reasonable commercial conditions. Clearing and associated data license costs should in principle be based only on the incremental/marginal cost of providing and distributing a given clearing/data service. All clearing service prices and terms & conditions should be made transparent to the users as proposed in chapter 6.1.

If you have questions on any of the issues addressed in this statement, we are happy to discuss them with you at your convenience.