Frankfurt,
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BVI[1] position on EBA's discussion paper on proportionality assessment methodology

We welcome EBA's initiative to provide a proportionality assessment methodology (PAM) to set a high-level framework for assessing the need for applying proportionality treatment of certain entities in the relevant EBA regulations. The methodologies are intended to assist supervisors in assessing how individual entities are to be treated under the CRR II and the IFR in accordance with the proportionality principle in the respective regulations where there are no explicit legal requirements at Level 1 and the EBA or competent authorities are required to develop proposals for further technical standards (e.g. Level 2 measures, opinions, guidelines). In particular, we welcome the EBA's clarification that proportionality assessments should not be generally discouraged if proportionality is not mentioned in the Level 1 specifications.

We focus our response on the impact on investment firms covered by the IFD and IFR framework. Germany represents about 700 investment firms, accounting for nearly one quarter of all European investment firms affected by the new IFD/IFR framework. The vast majority of these firms (about 600) is only authorised to provide MiFID services such as portfolio management, investment advice, reception and transmission of orders in relation to one or more financial instruments or execution of orders on behalf of clients without a licence to hold client money or securities belonging to clients or to deal on own account. These services are not comparable with banking activities and business models covered by the CRD and CRR II requirements. That was one of the main reasons to establish an independent new prudential framework for investment firms. **Therefore, we request to separate the PAM of investment firms from the PAM of credit institutions because the benchmark for assessing proportionality must be based on other criteria than those applied to credit institutions.**

***Q1:** Do you agree with the two steps that proportionality assessment addresses?*

In general, we support the proposed two separate steps for assessing proportionality comprises (1) the definition of four different classifications and (2) the definition of the metrics applicable to the different categorisations in view to assess whether there is need for proportional treatment of different categories of entities. **However, we disagree with the definition of four different classifications and, in particular, with the approach taken for investment firms (classification IV). We refer to our answer to Q5.**

Moreover, the proposed approach of the methodology, first to categorise the affected institutions and investment firms appropriately and then to assess the expected impact of the regulatory activity per category, is comprehensible. However, we are missing the next step of what to do with the findings of steps 1 and 2; the actual assessment of whether the regulatory activity is already proportionally designed or should be adjusted. We suggest that this be included as step 3 and formulated in more detail.

[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 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, 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.

***Q2.** Do you agree with Classification I to be used for proportionality assessment? Given that quantitative thresholds are also being used for the classification of credit institutions, the EBA would welcome suggestions for the regular recalibration of these thresholds, in view to maintain the sample size and composition relatively stable over time.*

As explained by the EBA, classification I is based on the classifications of the BCBS and will continue to be used for BCSB initiatives (e.g. Basel III monitoring). Therefore, we agree with the continued use in this context. However, this classification alone should not be used for initiatives and regulatory activities that do not originate directly from the BCBS or are intended to implement its standards in the EU. It is too imprecise for this and too focused on internationally active institutions. A combination of classifications I, II and III, as proposed in point 7, is appropriate here.

***Q3.** Do you agree with Classification II to be used for proportionality assessment? Do you consider the broad business model categories as adequately representative for proportionality assessment?*

Classification II according to the business model of the institutions makes sense in order to take into account not only the size of the institutions. We can understand the classification into the proposed 12 categories based on business models and, in our opinion, it reflects the European banking market, but a derivation of proportionality on this basis would be too small-scale to be able to be designed in a targeted manner.

However, deriving proportionality from the four broad business model categories alone would be too general. Therefore, a combination of business model (classification II) and size classification (classification I and III), as proposed in point 7, is also appropriate here.

***Q4.** Do you agree with Classification III that integrates CRR2 classification of credit institutions?*

Yes, we welcome that the criteria for proportionality enshrined in EU law are taken into account. Due to the legal importance of these criteria in the EU through the implementation in a Level 1 Regulation, they should also form the basic standard for all classifications.

***Q5.** Do you agree with Classification IV for investment firms to be used for proportionality assessment, where relevant? Do you consider necessary the EBA to establish an additional classification according to the size of investment firms?*

We welcome that the criteria anchored in EU law have been taken into account here as well. Classification IV for investment firms is intended to be a balanced mix of size and risk profile, in which the EBA is guided by the specifications of the IFR categorisation and allows discretion for additional use of further factors based on the business models.

However, we see the danger that a proportional assessment of investment firms as part of a methodology together with credit institutions would not be sufficiently taken into account. This is already evident from the fact that there are three classifications of credit institutions but only one for securities institutions. **Here, a separate methodology should be created for the assessment of proportionality for investment firms.**

In our understanding, however, classification IV serves solely to transfer the investment firms into the new classification I - III applicable to credit institutions. Thus, all investment firms covered by the

IFD/IFR framework which exceed the thresholds of Art. 12 IFR are to be assigned to category II and all small-sized and non-interconnected investment firms that do not exceed the thresholds are to be assigned to category III. The EBA refers here to the Annex of its 2017 opinion on the supervision of securities institutions (see para 396, Table 22). This opinion, however, focuses solely on the activities permitted under MiFID, but not on the possibility of holding client money. This would put medium-sized investment firms (e.g. portfolio managers without client money access permission with more than 1.2 billion assets under management as defined by the IFR) on an equal footing with banks that are classified in category II due to their business model. We do not see that such an approach would be appropriate. Small investment firms, on the other hand, would fall into category III with non-systemically important banks.

Q6. *Do you agree with the predefined metrics above? Do you have any further suggestions for the presentation of results, the addition of new metrics or the modification of the proposed ones?*

In Step 2, FINREP reporting positions are partly referred to when assessing the impact, e.g. in the case of costs. We would like to note that these are subsequently collected data that must be adjusted for the evaluation of the impacts. We lack explanations on how this should be handled. Similarly, there is a lack of explanations at other points in Step 2 on concrete methods of how these impact analyses are to be carried out.

In this regard, we would like to emphasise once again that part of this uniform methodology should also be the procedure for assessing and deriving the proportional design of the regulatory activities examined. Similarly, we do not see a clear assignment to a combined classification of size and business model in the classifications presented. Here, the suggestion from point 7 should be further elaborated (compare answer to Question 4).

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