BVI

Frankfurt am Main,
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BVI's[1] response to the EU Green Paper "Building a Capital Markets Union"

Q1: Beyond the five priority areas identified for short term action, what other areas should be prioritised?

Beyond the five specific issues identified as short-term priorities for action, we see the need for a more principle-based approach to determining the main pillars for the Capital Markets Union. In our opinion, the CMU should be built upon equal standards of investor protection (1), coherent EU regulation across sectors (2), and reduction of regulatory barriers to the efficient functioning of capital markets, including streamlined reporting of data (3).

1. Equal standards of investor protection

Capital market investments by European citizens are certainly capable of further development. Retail investors are increasingly in search for investments matching their long-term saving needs in terms of old-age provision. These retail savings could be channelled towards funding the real economy via capital markets.

However, retail investors will only be willing to invest in capital markets if they trust them and believe that the investment products purchased can safely secure a better return on their savings. Appropriate and coherent rules on investor protection across sectors are essential for restoring investors' confidence and building trust necessary for enhanced financial engagement. In this regard, we would like to refer to the following deficiencies in need of urgent action:

- Alignment of distribution rules under MiFID II and IMD II: The main area of concern is the persisting disequilibrium between the standards of investor protection applying to securities and insurance distribution. Today, investors buying securities investment products are already protected by requirements for cost disclosure and quality standards for distributors remunerated by commissions received from product providers. This regime of investor protection will be significantly strengthened under MiFID II by requiring comprehensive disclosure of all costs and charges and further tightening the conditions for allowing commission payments to distributors. In the context of the PRIIPs initiative, it has been generally acknowledged by the EU institutions that distribution of all investment products in the retail market should be subject to equal conduct of business rules in order to ensure effective protection of European investors. Notwithstanding this commitment which has been explicitly enshrined also in the MiFID II legislation[2], the risk that the IMD II reform defining future rules for distribution of insurance-based investment products will substantially fall behind the MiFID II standards has still not been banned. Against the backdrop of the CMU initiative, we would like once again to call upon the EU institutions to introduce equal standards of investor protection

[1] BVI represents the interests of the German investment fund and asset management industry. Its 89 members manage assets in excess of EUR 2.6 trillion in UCITS, AIFs and assets outside investment funds. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

[2] Cf. recital 87 of the MiFID II Directive (Directive 2014/65/EU).

and align the distribution rules for investment products in the pending trilogue negotiations on IMD II.

- Stronger focus on investor protection in the complex products debate under MiFID II: The MiFID regime classifies certain products as complex in order to prohibit their sales by way of execution-only. However, the notion of complexity is currently subject to rather abstract debates at Level 2 without sufficient reference to products available in the market and thus, without paying sufficient regard to the potential implications for investors. In particular, all AIFs shall be treated as complex products according to ESMA's technical advice from December 2014, although these vehicles include highly regulated retail funds. As a consequence, retail funds that observe rules on eligible assets and investment limits, provide for risk diversification and redemption rights for investors, where the issuer is regulated and the product is approved for marketing to retail investors would be considered complex whereas other products such as listed shares or bonds would be considered non-complex even though they tend to be less appropriate for retail investors due to the higher concentration and liquidity risk.

2. Coherent EU regulation across sectors

Enhancing coherence of the EU regulatory framework will materially improve its practical application, allow efficiency gains for market participants and facilitate effective supervision. In this context, we would like to point to the following impending inconsistencies in the currently discussed EU initiatives:

- Duplication of reporting/disclosure requirements for asset managers under SRD II: The Commission's SRD II proposal adds another layer of regulation (e.g. reporting / disclosure requirements) for asset managers although similar rules are already included in AIFMD and UCITS framework. For instance, the SRD II proposal requires asset managers to set up an engagement policy for their relationship with investee companies. This requirement, however, partly duplicates the existing duties of asset managers under AIFMD and UCITS Directive particularly in relation to the exercise of voting rights and the management of conflicts of interest. The same applies to the proposal to include reporting requirements for asset managers to specific institutional clients where both the AIFMD and UCITS Directive require client reporting on the same or similar subjects such as investment activities and portfolio turnover costs.

- Unequal treatment of market participants regarding clearing obligations under EMIR: Pension funds have been granted a temporary exemption from clearing obligations under EMIR due to their perceived lack of liquidity. This exemption has only recently been confirmed and extended by the Commission[3]. UCITS' access to liquidity is also severely constrained due to the ESMA Guidelines on ETFs and other UCITS issues. According to these Guidelines, UCITS are prohibited from reusing cash obtained through repo transactions for the purpose of collateralising positions arising from OTC derivative trades. Nonetheless, UCITS do not benefit from a comparable exemption in relation to the central clearing.

- Transparency standards for benchmark providers do not match with information needs of benchmark users: The level of transparency in relation to benchmarks as determined in the ECON Report and the Council position on the EU Benchmark Regulation is not sufficient for investment funds and other users of indices to comply with their obligations under EMIR and MiFID/MiFIR.

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[3] http://europa.eu/rapid/press-release_IP-15-3643_en.htm?locale=en.

Asset managers are themselves subject to extensive transparency requirements and conditions if using financial indices as benchmarks especially under the ESMA Guidelines on ETFs and other UCITS issues[4]. In light of the growing importance of indices and growing transparency requirements, including the regulatory reporting on an underlying index by the end users as foreseen in the EMIR and MiFID/MiFIR transaction reporting, it is necessary to impose corresponding transparency requirements upon index providers in order to enable index users to comply with the regulatory requirements. This pertains in particular to the availability of clear summary information on the index objectives and its key construction principles, complete information on the index construction and calculation methodology and historical data on constituents and weights. In this context we strongly support the ESMA assessment[5] related to the transparencies for alternative indices that index providers have to provide investors with a tool box of methods, data, constituents and weightings allowing the investor to replicate both the index construction and also the simulated/historical performance.

- Target market under MiFID II and consumer type under PRIIPs: The MiFID II regime will require the definition of a target market by product manufacturers and distributors taking into account the risk and reward profile and charging structure of a product. The PRIIPs Regulation, on the other hand, foresees the specification of the consumer type for a product in the KID to be provided to investors. According to the preliminary suggestions by the ESAs, this determination shall be considered as a summary of the overall risk and reward profile of the PRIIP. Since the consumer type will predetermine the admissible target market for a PRIIP distribution, it is important that the criteria for defining the consumer type and the target market be fully aligned.

The cited initiatives often pursue the same objectives, but result in separate sets of rules which differ in terms of either wording or specific content. As a consequence, the same or similar issues are dealt with twice or even multiple times, thereby increasing complexity and costs for market participants, investors and supervisors.

3. Reduction of regulatory barriers to capital markets

Removal of regulatory provisions which hinder the efficient functioning of the EU capital markets should be considered an overarching priority for the CMU initiative. In this regard, the multiple and inconsistent reporting requirements emerging from different pieces of EU legislation present a particular nuisance for the industry:

- Streamlining of reporting requirements in terms of data standards and contents: The applicable and pending requirements for **transaction-level reporting** under EMIR, MiFID II/MiFIR and SFT Regulation display considerable differences in terms of reporting details, reporting channels, data repositories and applicable IT standards. The same pertains to the **regulatory reporting** on positions and risks required under AIFMD, UCITS Directive and MMF Regulation as well as to **reporting obligations for institutional investors** under Solvency II/CRR which require delivery of data and further support services by asset managers. Enhancing consistency and bringing more light into the jungle of reporting requirements is badly needed in order to enable the regulators to use the stored data for the purpose of detecting systemic risk and to keep the administrative burden for market participants at a reasonable level. A reasonably streamlined approach to reporting

[4] Cf. para. 56 to 62 of the ESMA Guidelines on ETFs and other UCITS issues (ESMA/2014/937).
[5] Cf. http://www.esma.europa.eu/system/files/2015-esma_rd_01_2015_527.pdf.

should entail cost savings for market participants such as fund management companies which may run into millions of Euros. As a starting point, data standardisation along the whole value chain should be based generally on ISO 20022. Overall we believe that ISO 20022 offers the best potential for cost-effective and future-proof implementation. It has a strong methodology and model for defining and structuring financial data, and an open governance process that ensures a level playing field for standardisers and users. It also offers expert international scrutiny of submitted content. ISO 20022 is now being implemented in a growing number of markets, which results in increasing opportunities for automation and interoperability.

- Enhancing harmonisation of shareholder transparency rules: The EU Transparency Directive still allows for national divergences regarding information about major shareholdings and related sanctions. In Germany, for instance, the initial threshold for notification of major holdings is set at the acquisition of 3% of voting rights[6], even though the mandatory initial threshold at EU level is set at 5%. Other Member States have adopted similar or even more radical modifications to the EU transparency regime. For asset managers and institutional investors with an EU-wide investment perspective, such inconsistencies in the notification rules amount to a clear impediment for investing cross-border, since they must fear to be temporarily deprived of their voting rights and in some countries such as Germany of their entitlement to dividend payments in case of non-compliance[7].

- Tightening of rules should be reserved to remedying evidenced abuses: A regulatory "arms race" with regard to silo rules for different sectors/under different pieces of EU law should be avoided. An example are the rules on sound remuneration which were originally designed for the banking sector and aimed at reducing systemic risk by eliminating wrong incentives for the so-called risk takers. Seen from that angle, remuneration rules should not have been applied to the asset management sector since asset managers act as agents for the account of investors within of predefined investment strategies and do not undertake any risks on their own books. The rules for depositaries which have been installed under the AIFMD as a reaction to the weaknesses exposed by the Madoff case can be seen as another instance. There is no reason to materially tighten the rules when transmitting them to the UCITS framework in a way currently discussed at Level 2 in relation to the independence requirement.

*Q2: What further steps around the availability and standardisation of **SME credit information** could support a deeper market in SME and start-up finance and a wider investor base?*

Asset managers interested in investing in SMEs must observe high standards of diligence in the selection and ongoing monitoring of investments in order to act in the best interests of their investors and the integrity of the market. In this context, asset managers use credit information (such as credit ratings) as one parameter for reaching their investment decisions. Before carrying out investments, asset managers are also obliged to take into account (where appropriate) the nature of the foreseen investment, formulate forecasts and perform analyses concerning its contribution to the fund's portfolio composition, liquidity and risk and reward profile. These analyses need to be supported by reliable, updated and meaningful information, both in quantitative and qualitative terms.

[6] Cf. § 21 para. 1, first sentence of the German Securities Trading Act (WpHG).
[7] In Germany, persons are not only deprived by law of their shareholder rights for the period of non-compliance in case of incorrect or omitted notifications but also of their entitlement to dividend payments, cf. § 28 WpHG.

Therefore, minimum transparency standards for SME credit information would be helpful to render SME investments more attractive for the asset management sector. In particular, there should be easy access to relevant data relating in particular to the solvency of an undertaking and to any material changes thereof. External ratings might be too expensive for SMEs and could again create the risk of over-reliance.

*Q3: What support can be given **to ELTIFs** to encourage their take up?*

The new ELTIF framework has the potential to broaden the investment opportunities available to EU investors and to unlock capital for significant contributions to the financing of infrastructure and other tangible assets such as real estate. The EU passport for retail distribution of ELTIFs could partly close the gap between UCITS offering retail investment opportunities in securities markets and AIFs equipped with a passport for professional investors. To become a market success, the framework hence needs to address the interests and needs of retail as well as professional investors.

The EU institutions agreed in the trialogue to add specific requirements for marketing to retail investors. While we understand the general concerns and agree with many of the safeguards to be beneficial to the investor, we doubt that the 10 percent threshold for the aggregated portfolio of retail investors with a portfolio not exceeding Euro 500,000 is beneficial for the investor. Thresholds might also give an incentive to investors to reach these and consequently provide the ELTIF manager with information that is not complete. The rules in addition bear liability risks for the manager despite the legislator's intention in the trilogue to reduce such risks, since they will also be subject to interpretation under national civil law. These uncertainties may discourage management companies from setting up ELTIFs.

In addition, the parties to the trilogue intended to allow for ELTIF investments by investors such as municipalities, churches, charities and foundations based on marketing conditions for professional investors. Such an approach would have equipped ELTIFs with a special passport for certain types of investors which do not per se fulfil the criteria of professional investors according to MiFID. In its final form, however, the ELTIF Regulation only allows these investors to be treated as professional investors if they qualify as professional investor according to MiFID[8]. Hence, the ELTIF Regulation fails to provide for an advantageous treatment of these types of investors and in the end, falls short of establishing a broader investor base compared to "ordinary" AIFs.

From the professional investors' perspective such as insurance companies, the regulatory conditions investing in ELTIFs are not yet attractive. ELTIFs feature no distinct advantage for professional investors as compared to "ordinary" AIFs, since it is already possible to launch professional infrastructure funds under the AIFM framework and to market them cross-border without being subject to restrictions on the range of eligible investments and the fund's lifetime.

*Q4: Is any action by the EU needed to support the development of **private placement** markets other than supporting market-led efforts to agree common standards?*

There are two aspects why a coherent concept of private placement regimes is relevant for the fund industry:

[8] Cf. recital 42 of the ELTIF Regulation.

- AIFMD does no longer follow the concept of public offering versus private placement. Compared to other forms of investments, fund units hence have a competitive disadvantage. For instance, securities may be placed without providing for a prospectus if fewer than 150 non-qualified investors per EEA Member State are addressed. A coherent private placement regime should readjust AIFMD in this respect.

- As professional investors asset managers should benefit from private placement regimes which allow specific types of investments to be more easily placed including cross-border placements.

Q5: What further measures could help to increase access to funding and channelling of funds to those who need them?

Asset managers act as fiduciaries in the interest of their clients and in accordance with their instructions and the agreed investment strategy. Nonetheless, in times of enduring low interest rates which minimise yields on the traditional core investments by insurance undertakings and pension funds, asset managers are requested to seek for alternative investments to serve their clients' needs.

Investments in long-term projects such as infrastructure could be perceived as a suitable alternative and are increasingly gaining interest from institutional investors. In this respect, it is requisite that insurance undertakings and pension funds are not deterred from investing in infrastructure by overly restrictive regulation e.g. in terms of capital requirements. Thus, we welcome recent discussions on a new category of infrastructure investments and its prudentially sound treatment under the Solvency II framework. In addition, national regulators should be encouraged to promote infrastructure investments by appropriate adaptations to the legal frameworks governing investments by smaller insurers and pension funds not falling under Solvency II.

Furthermore, we are in favour of further exploring the notion of fund investments in loans at the EU level. An EU framework harmonising conditions for fund investments in loans and possibly introducing a distinct category of specialised loan funds would facilitate infrastructure investments (since these are often debt- and rarely equity-based) and could promote cross-border engagements of institutional investors throughout Europe.

Q6: Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

We strongly support the Commission's thrust for improving standardisation and liquidity in the bond market, especially for covered and corporate fixed income products. As a consequence of the financial, economic and EU debt crisis, the confidence in the bond markets has declined, thereby deteriorating the overall liquidity in trading fixed income products, especially in the secondary market. The new capital requirements for credit institutions and broker/dealers have restricted their ability to hold large inventory of fixed income products and impaired their ability to act as market maker/liquidity provider, especially in the case of financial shocks. The overall liquidity in the (secondary) fixed income market has declined as generally illustrated by some market observers[9].

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[9] Cf. IMF: http://www.imf.org/external/pubs/ft/survey/so/2015/pol040815b.htm, Morgan Stanley/Oliver Wyman: http://www.oliverwyman.com/content/dam/oliverwyman/global/en/2015/mar/2015_Wholesale_Investment_Banking_Outlook.pdf.

In this economic environment, German management companies acting as agents on the behalf of highly regulated investment funds (UCITS/AIFs) usually need to execute large institutional bond (block) orders with minimal market impact (e.g. on behalf of (corporate) bond funds). At the same time, they have to adhere to the best execution standards as laid down in the regulatory frameworks and in the investment guidelines. The German fund industry is thus interested in liquid, transparent and stable bond markets, thereby providing efficient capital allocation for issuers and investment opportunities for savers and retail/institutional investors.

However, the current bond market environment combined with the upcoming MiFID II/MiFIR proposal tabled by ESMA[10] related to the definition of liquidity will further hamper the ability of fund managers to execute large fixed income orders in the market with minimal market impact.

In this context, we reiterate our position that the calibration of the definition of liquidity for fixed income financial instruments is totally different from equities. Liquidity of fixed income products cannot be determined by intrinsic characteristics captured by reference data or other objective factors. Fixed income products are mainly liquid directly after the issuance up to a few months, but most should be considered illiquid during a large part of their life cycle. The trading activity of fixed income products cannot be determined in advance as additional factors such as unpredictable market events play a significant role in the bond markets. An inappropriate classification of illiquid fixed income instruments as possibly liquid will lead to the unintended consequence that broker/dealers or liquidity providers are not willing to provide prices that will be made public due to the fact that those market participants are exposed to an undue risk. In this respect, it could happen that other market participants will be running predatory strategies which might harm the interests of institutional or retail investors. As a consequence, institutional or retail investors might have to bear higher transaction cost or the inability to trade bonds in large quantities within a short time period.

In the context of the current Level 2 MiFID II/MiFIR discussion, we encourage the EU Commission to ensure that ESMA develops a balanced approach for the classification of liquidity for fixed income products taking into consideration the requirements by the buy-side to execute large fixed income block orders with minimal market impact.

For that reason, we support a simpler classes-of-financial-instruments approach (COFIA) with fewer classes and corresponding issuance sizes which will probably decrease the number of illiquid fixed income products to be classified as liquid. Furthermore, we suggest lowering the SSTI (size specific trade instrument) waivers enabling broker/dealers and liquidity providers to further provide prices which do not expose them to an undue risk.

Furthermore, we support developing further measures which could improve liquidity in the corporate bond market:

- Usage of electronic trading platforms: Buy-side firms have generally access to several electronic trading platforms across different asset classes (e.g. BBT, MarketAxess, TradeWeb, Algomi). Furthermore, the number of new trading platforms is growing with different ideas to increase the liquidity and to match the offers/bids in the market. Over the last years, many sell-side firms tried to establish their own trading platforms (e.g. UBS PIN) which have not gained sufficient attractiveness as it requires too much time for the buy-side to verify the prices of a fixed income product in

[10] Cf. ESMA Consultation Paper, 19 December 2014 (ESMA/2014/1570).

numerous different trading systems. As a starting point of discussion, trading systems which merge the prices of different market makers/dealers in one trading platform instead of having a single platform for each dealer are the preferable solution.

Electronic trading has definitely supported the liquidity in the market and provided access to more illiquid asset classes such as emerging market bonds, USD denominated bonds etc. However, the usage of electronic trading platforms is generally limited to homogenous issues (e.g. sovereigns). In contrast, ABS papers are considered to be less liquid. Therefore, the usage of electronic trading platforms will not generate more liquidity, but rather, it could foster easier access to already existing latent liquidity in the market.

Secondary trading in corporate bonds depends on many factors such as the size of the tickets, issue size of the bond, positioning of market participants, ratings etc. Electronic trading in corporate asset classes is feasible and competitive up to a certain size but not necessary for big institutional order blocks. In parallel, well-established RFQ systems should be allowed to be used.

- Limited standardisation in the (covered/corporate) bond markets: At least a limited standardisation of issuance could help to reduce the overall number of new issues, thereby facilitating and concentrating liquidity by reducing the number of fixed income products available for trading in the bond markets. For a start, a possible standardisation of fixed income instruments could be focused on a limited subset of corporate bond products. However, such standardisation could not be the key driver in the secondary market and should not be made mandatory as it would otherwise reduce the flexibility of bond issuers to develop fixed income products which serve the investor needs and the real economy. The liquidity in the secondary markets is driven by the turnover of a security, the issue size, tailor-made issues for issuers and/or investors and the necessity of credit institutions and broker/dealers to take large positions in their books.

Standardisation of bond covenants: BVI is a long-standing supporter of standardisation of investment grade bond covenants[11], for instance, we support Model Covenants in Sterling and Euro Bond Issues. The new model covenants will be for investment grade issues in the Sterling and Euro denominated bond markets. The initiative is backed by the Bond Covenant Group (TBCG), comprised of the Association of British Insurers (ABI), BVI, the Investment Association and the National Association of Pension Funds (NAPF). The model covenants are not offered as a mandatory set of investor requirements, but as building blocks which can, where necessary, be tailored to individual issuer circumstances. They are not retrospective. TBCG intends that they should be a living document and expects that their usefulness over time will lead to a general adoption in investment grade markets.

- Treatment of research: Provision of research on corporate debt should not be considered as inducement under MiFID II/MIFIR because there is no evidence that trading spreads will change as a result of separate payment of research.

We support the implementation of the above proposed measures by a market driven action plan which should be encouraged and monitored by the regulatory community instead of imposing regulatory requirements in addition to the MiFID II/MiFIR regime.

[11] Cf.http://www.bvi.de/fileadmin/user_upload/Regulierung/Branchenstandards/Corporate_Bond_Standards/Press_Release_Model_Covenant_Launch_201006.pdf.

Q7: Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

No regulatory action is currently required. In the past few years many regulatory measures have already been taken. These include the Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups or the PRIIPs Regulation. We believe that sufficient time should be allowed in order to properly assess the effects of these measures.

Nevertheless, BVI is supportive of any initiative enhancing in particular the education of investors. For asset managers, ESG investments are generally business opportunities depending on investors' demand. Although there is a significant trend to reflect ESG criteria in investments strategies for institutional investors, the demand on the retail side still remains low. We believe this is also due to insufficient awareness regarding the potential of ESG investments. Besides of supporting development of guidelines by the market, the regulator could require public bodies to act as role models, e.g. national public pension funds should be required to be transparent on ESG investments.

Furthermore, the Commission could support other activities having the potential to raise awareness. For instance, the regulator could support creation of ESG segments at the stock exchanges. Issuers' enhanced disclosure of ESG criteria is decisive to enable asset managers to increase ESG investments.

The Commission could also support voluntary ESG certifications launched by private initiatives. It is, however, crucial that such certifications only cover selection processes and not the investment content. ESG contents rely on sustainability analysis, risk assessment, and/or ethical choices, which are not same among investors. Investors have different requirements, conditioned by their own investment goals, giving them different perceptions of what is a responsible investment or not. Only processes of investment decisions should be covered by an ESG certification.

Q8: Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

While we agree that a common, high quality accounting standard enhances the capital market communication and consequently capital allocation, we doubt that the positive harmonisation experience made by large listed companies can be transferred to SMEs. We refer to insights resulting from the development and the application as well as the non-application of the International Financial Reporting Standard for small and medium-sized entities (IFRS for SMEs). In addition, experience and results from the development of the Accounting Directive 2013/34/EU should be taken into consideration.

Q9: Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

No response

Q10: What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

An EU regulatory framework which is competitive in worldwide terms, consistent with and adaptable to the investors' needs is important. Especially, investments in long-term projects such as infrastructure should be attractive from the prudential perspective and not discouraged by high capital requirements in particular under CRDIV/CRR and Solvency II. In this regard, we welcome the recent thrust by EIOPA to determine a new category of infrastructure investments subject to certain standards e.g. in terms of transparency and benefitting from a more favourable treatment in prudential terms (cf. our answer to Q5 above).

We further believe that the introduction of a new EU category of "semi-professional" investors could broaden the professional investor base and further diversify the supply of funding to long-term projects. In our view, such new investor category should be modelled along the lines of EuSEF/EuVECA Regulations which inter alia impose a minimum investment amount for investments by non-professionals[12]. Under these conditions, institutions such as foundations, charities, national providers of pension schemes, church organisations or family offices which generally favour long-term engagements could receive access to investment vehicles with focus on infrastructure or SME financing which are mainly set up for professional investors.

In light of the increased costs associated with bank-lending, there is a growing market demand for specialised loan funds which should be able to originate loans ("loan originating funds", primary market) and to invest in loans granted by banks ("loan investing funds", secondary market). We would welcome appropriate EU measures aiming at developing rules on loan originating funds which are tailored to the investors' needs in order to ensure viability of the product while clearly addressing the potential issues arising from the shadow banking debate. Moreover, Member States should be encouraged to dismantle barriers for institutional investments in loan investing funds.

Regarding the existing EU rules for eligible investment vehicles, it should be noted that the regulatory conditions for ELTIFs are not yet attractive from the investors' perspective (cf. our answer to Q3 above). In more general terms, regulation deterring institutional engagements on capital markets should be avoided. In this regard, we would like to point to the recent considerations by EBA to treat all AIFs as shadow banks and in consequence to limit the credit institutions' exposure to AIFs[13]. Besides the fact that such blanket classification of AIFs as shadow banks lacks any basis in the international work on the shadow banking issue conducted so far, the approach suggested by EBA would have detrimental effects on the provision of capital-based financing in the EU.

Q11: What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

In order to achieve cost savings in the cross-border fund distribution, it is very important to avoid as much as possible national regulations gold-plating the EU rules. This is of particular importance in

[12] Cf. Art. 6(1) of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 respectively.

[13] Cf. Consultation Paper relating to Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013 (EBA/CP/2015/06).

relation to the functioning of the EU passports since additional requirements in this regard act as deterrents for middle-sized and smaller fund managers to offer their products cross-border. Also, it would be helpful to keep the administrative fees for cross-border marketing notifications at a reasonable level. Currently, the processing fees charged by the host State authorities amount to a problem in both procedural and financial terms. Procedurally, the national standards as to when, to whom and in which way a fee shall be paid display considerable differences. In terms of costs, marketing of an AIF into several EU jurisdictions can be an expensive exercise implying potential payments of ten thousands of Euros only for handling/storing the notification files processed by other EU authorities.

A sweeping harmonisation of product-related marketing rules and further bundling of supervisory competences at the fund manager's home Member State authority has also the potential of reducing costs (cf. our reply to Q17 below).

In wider terms, we would like to suggest a stricter approach to cost-benefit analyses accompanying EU legislation. Especially, consideration of costs and benefits of a regulation should not be limited to the relevant legal act, but should adopt a broader view including potential implications on other EU frameworks in order to enhance coherence of the single rulebook (cf. our reply to Q1 above). In this context, we would like to note the following:

- Consistency of regulatory reporting: As already pointed out in our reply to Q1, regulatory reporting under the UCITS Directive, AIFMD and the future MMF Regulation takes/will take place in different frequencies, different formats and with reference to different contents. This entails huge unnecessary costs for fund managers offering products under all three sets of EU rules. Furthermore, asset managers provide assistance to their institutional clients, in particular insurance companies and banks, for fulfilling regulatory reporting duties incumbent upon these entities. Also in this regard, different risk indicators apply to investment funds under Solvency II and the CRD IV regime, thus adding to the complexity and costs of risk reporting.

- Treatment of all retail AIFs under MiFID II as complex: According to ESMA's technical advice on possible Level 2 measures to MiFID II, all AIFs shall be considered complex products and thus shall not be eligible for "execution-only" distribution (cf. our comments on Q1). Apart from the fact that this assessment appears contestable from the legal perspective (ESMA failed to provide any legal arguments in its favour), such general classification as complex has the potential of increasing the marketing costs of AIFs. Firstly, all potential AIF investors will be required to undergo at least an appropriateness test before investing. Secondly, provision of investment advice on AIFs might be inhibited as well since according to ESMA, advisers recommending investments in complex products are bound to apply stricter criteria on suitability.

- Use of share classes by UCITS: Share classes are essential tools for cost-efficient fund management in the European and global context. They allow fund managers to respond to the varying investors' needs relating to e.g. maximum/minimum investment amounts, types of fees and charges, denomination of currency, allocation of revenues etc. needs in a prompt and cost-efficient manner while maintaining a common management solution and offering the expertise of a particular fund manager to the whole fund. These efficiency gains in fund operations should not be curtailed without the evidence for misuse or other type of misconduct. Thus, while welcoming a common approach to the use of share classes by UCITS as envisaged by ESMA in its recent discussion

paper[14], we caution against hampering the use of share classes for the efficient management of various investors' demands.

Q12: Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

Any EU measures promoting infrastructure investments should take into account that the relevant types of infrastructure projects which need increased funding may vary among the Member States and over time. Hence, the range of infrastructure sub-classes benefitting from a preferential treatment under CRD IV/CRR and Solvency II should be sufficiently wide as to fulfil both the infrastructural needs of the Member States and the appetite of institutional investors.

Debt financing of infrastructure projects in some Member States is subject to withholding tax ("WHT") if the financing instrument is a loan or unlisted private placement. On the other side, listed Eurobonds are generally exempted from WHT. However, listed Eurobonds do not easily accommodate greenfield projects with construction drawdowns. Additionally, infrastructure investors generally prefer to invest privately in order to be able to engage in non-public conversations as part of asset management activities. Thus, in order to boost infrastructure investments, it would help abolishing WHT for infrastructure debt at national level.

Q13: Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

The supply and demand of pension products is mainly influenced by national tax incentives and the local social security systems. Therefore, the success of a standardised European pension product will be constrained by its integration in local pension systems, especially in local tax relief programs.

In this context, we would like to refer to the blueprint for a European Personal Pensions developed under the auspices of EFAMA[15].

Q14: Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

No response

Q15: How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

No response

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[14] Cf. ESMA Discussion Paper "Share classes of UCITS" from 23 December 2014 (ESMA/2014/1577).
[15] Cf. the following pages: http://www.efama.org/Pages/The-OCERP---EFAMA-publishes-blueprint-for-European-Personal-Pension-Products.aspx and
http://www.efama.org/Publications/Public/EFAMA%20_EPP_Report_FINAL4March2015).pdf.

Q16: Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

Under the current CRD IV/CRR capital requirements, the costs for bank loans have significantly increased. This holds particularly true with respect to SMEs and small start-up companies which are generally being assigned the highest possible credit risk.

With respect to non-bank direct lending, we welcome recent initiatives by some Member States to implement a legal framework for loan originating funds. However, in the interest of a true level playing field between competing investment funds within the EU, there is a strong need for harmonised EU rules governing lending activities by investment funds. Hence, the introduction of "EU originating loan funds" as a new AIF sub-type would be helpful. Such fund type should be developed with the goal of providing an efficient and attractive vehicle which allows for viable financing solutions for undertakings in need of both capital and investors (cf. also our reply to Q10 above).

Q17: How can cross border retail participation in UCITS be increased?

In our view, cross-border retail participation in UCITS is quite considerable compared to other investment products. Further enhancement can be achieved by streamlining the EU passporting rules relating to both distribution of funds and fund management services by the UCITS providers.

With regard to the former, we believe that further harmonisation of national marketing regimes would be very helpful. Currently, modalities of UCITS marketing and dealing with redemption requests/other payments to investors are subject to diverging national requirements under Art. 91(3) of the UCITS Directive. In this regard, some Member States require identification of a local financial institution as a paying agent who satisfies redemption requests and makes other payments to investors. This requirement which is not foreseen by the UCITS Directive significantly increases marketing costs of UCITS in the relevant jurisdictions.

Q18: How can the ESAs further contribute to ensuring consumer and investor protection?

According to our experience, the ESAs are already very active in the area of investor protection. Supervisory guidelines agreed by the ESAs under many EU frameworks such as MiFID or UCITS Directive often aim at harmonising and increasing the standards of investor protection in the practical application of EU frameworks. Consistent implementation of the ESA guidelines is being ensured by peer reviews, thus further contributing to the supervisory convergence. The ESAs' competences in the area of investor protection will be further enhanced by the product intervention rules under MiFID II and the PRIIPs Regulation.

In our view, this set of tools is fully sufficient to warrant a strong role to be played by the ESAs in ensuring investor protection. Hence, no modification of the ESAs' institutional competences is needed.

In this context, we would like once again to point out that the best and most straightforward way to effective investor protection is establishing a level playing field at the point of sale. European investors should benefit from the same standards of service quality and transparency regardless of which investment product they buy or which distribution channel they contact. Aligning the investor protection

rules under MiFID II and IMD II would achieve a crucial progress in this regard (cf. also our answer to Q1 above).

Furthermore, we are supportive of initiatives at EU and national level aiming at improving investor education and enhancing investors' ability to make informed and conscious investment decisions (cf. also our reply to Q19 below).

Q19: What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

In our opinion, the rather low levels of retail investments in capital markets observed in several Member States are due to the damaged trust in the aftermath of the financial crisis and the lack of personal confidence resulting from insufficient financial education.

Investors' trust can be restored by evidence of undistorted market functioning. A key prerequisite, however, is a sound and coherent regulatory framework warranting effective protection of European investors. As pointed out in our reply to Q1 and 18 above, European investors should benefit from the same standards of service quality and transparency regardless of which investment product they buy or which distribution channel they contact. A material alignment of the investor protection rules under MiFID II and IMD II would achieve a crucial progress in this regard.

As regards the aspect of personal confidence in investing, it is certainly important to enhance investor education programs in order to enable European citizens to understand at least how capital market investments can contribute to funding their retirement. In addition, however, it is also crucial to ensure that European investors retain meaningful access to professional investment advice. Given the complexity and the great variety of product available as investment options in the retail market, we fear that the EU citizens' willingness to invest could further decrease should their ability to obtain professional advice at reasonable cost be curtailed. Thus, commission-based advice models representing established channels of providing investment advice services to the mass retail market should be upheld under the MiFID II regime in line with the EU legislator's decision for a competition of systems at Level 1. In addition, the regulatory requirements applying to investment advice must remain feasible in the day-to-day retail business. This pertains in particular to the conditions for suitability testing and the suitability report to be provided to clients under MiFID II. In light of the German experience with the "advice minutes" (Beratungsprotokoll) which is a national equivalent to the suitability report, we see a serious risk of banks withdrawing from the advice business in case of overly burdensome regulation.

Q20: Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

We believe that the UCITS framework already sets the necessary conditions for launching simple investment products for consumers as well as other products suiting investors' needs. In addition to being fully transparent to investors, UCITS are already highly regulated in terms of eligible investment assets and corresponding measures of risk management.

Q21: Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?

We would like to refer to the main pillars supporting the Capital Markets Union as identified in our reply to Q1 above. In our view, enhanced coherence of the EU frameworks governing capital market operations and reduction of inefficiencies stemming e.g. from inconsistent pieces of EU law are of key importance for attracting investors, including those from outside the EU, to invest on a larger scale and in cross-border context. In addition, regulation of capital markets should be seen as accompanying, not stifling, financial innovation with a clear regulatory framework.

A more harmonised EU environment in relation to taxes would also help to increase the competitiveness of the EU marketplace. Currently, efficient cross-border distribution strategies are often impeded by differences in tax regimes.

Lastly, a clear allocation of responsibilities and harmonised solutions for ensuring compliance with the applicable anti-money-laundering and terrorism financing regulation are also desirable. In relation to the EU anti-money-laundering regime, we see the need for reducing complexity in the application of the risk-based approach, identification of politically exposed persons and tracing of ultimate beneficiaries. The potential to use already existing data repositories should be explored in order to cut red tape.

Q22: What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

The EU international trade policy should support international sales of financial products. In this respect, we would like to encourage the Commission to include asset management services and products in the scope of the pending TTIP and TiSA negotiation. If based on practicable conditions of reciprocity, these trade agreements could grant European asset managers meaningful access to non-EU markets and thus, could significantly boost the capital base for European investment vehicles. A prerequisite of such multilateral opening of markets should be an agreement on common minimum standards of investor protection in line with the key principles of the relevant EU frameworks.

In addition, we believe that the Commission should support the efforts undertaken by IOSCO to develop in the short term principles of mutual recognition among countries as well as to reinforce in the medium term harmonisation of high level regulatory principles at the worldwide level[16].

Q23: Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

For measures to increase liquidity in bond markets, please see our answer to Q6.

As regards improvement of functioning and efficiency of the equity markets, we strongly recommend developing a consolidated tape for equities in Europe as a critical element of driving down the cost of capital for companies.

Q24: In your view, are there areas where the single rulebook remains insufficiently developed?

[16] Cf. Consultation Report of the IOSCO Task Force on Cross-Border Regulation (CR09/2014) from 25 November 2014.

In our opinion, development of the single rulebook in relation to capital markets has in principle made major progress in the last couple of years. This achievement, however, is sometimes flawed by inconsistent or duplicative regulation under different pieces of EU law. In this context, we would particularly like to point to the following deficiencies:

- Diverging remuneration rules for asset managers: Asset managers offering services and products under different EU frameworks such as UCITS Directive, AIFMD and MiFID are legally required to comply with three different sets of rules with regard to remuneration of their personnel. In addition, asset managers holding a MiFID license or being part of a banking group are affected by the CRD IV standards on remuneration. Asset managers belonging to an insurance group could also be affected by the future Solvency II remuneration rules. These five EU regimes – UCITS Directive, AIFMD, MiFID, CRD and Solvency II – co-exist on separate grounds and differ considerably in many details concerning the remuneration structures[17]. This leads to major difficulties in the practical application of these provisions, since management services in an entity are generally structured according to the expertise of specialised management teams. Thus, it is very common for asset management firms to have management teams for e.g. European corporate bonds, North American or South-East Asian equities which then provide services to all portfolios focusing on the relevant markets. In this situation the affected fund managers need to be remunerated according to CRD/Solvency II, AIFMD, UCITS and MiFID rules within one employment contract which is barely possible to be put into effect. This situation could be further exacerbated by the new guidelines on sound remuneration under CRD IV currently consulted by EBA[18] which aggravate the legal competition problem in relation to the fund frameworks[19].

- Inconsistent and multiple reporting requirements: As explained in our reply to Q1 and 11 above, the existing and pending reporting requirements at the transaction and entity level display considerable differences in terms of reporting contents, reporting frequencies and channels, including the necessary IT solutions. This is mainly due to the fragmented EU regulatory landscape, with several EU Directives and Regulations defining separate reporting standards not coordinated with other EU initiatives. In addition, even under one EU framework, reporting is often insufficiently standardised which causes significant problems in the collection of data as currently experienced under AIFMD. Intensified work on streamlining the reporting requirements and the possibilities to use common reporting channels and data repositories is badly needed in order to enable effective use of data and facilitate major cost savings for the industry.

- Unequal investor protection at the point of sale: The current divergences in regulatory standards pertaining to service quality and transparency under the MiFID and IMD framework undermine effective protection of European investors looking for investment opportunities on capital markets. These divergences might be further exacerbated should the IMD II reform fall behind MiFID II in respect of key conduct of business standards such as admissibility of commission payments to distributors (for further details, cf. our comments on Q1, 17 and 18 above).

[17] For instance, the composition of a remuneration committee is regulated on different terms under CRD IV and AIFMD, and shall still be different under UCITS V. Also, payment of the variable remuneration component and the ratio between fixed and variable remuneration must be expected to follow different rules under all five directives.

[18] Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 (EBA/CP/2015/03).

[19] The draft guidelines explicitly require application to the staff employed by the subsidiaries of a credit institution, including those not subject to CRD, cf. para. 5, para. 6 letter g and para. 63.

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- Subversion of the temporary exemption for UCITS under the PRIIPs regime: The PRIIPs Regulation defining new transparency standards for retail investment products provides for a temporary exemption for UCITS and retail AIFs featuring a UCITS-like information document according to national law[20]. The legal background for this treatment is the complete overhaul of the UCITS product information due to the UCITS IV reform which has led to the introduction of the UCITS KIID only in June 2012. Hence, according to the EU legislator, UCITS should not be required to switch to a completely new concept of product transparency after only a few years of experience with the UCITS KIID. Nonetheless, this legislative decision is being disregarded in the ongoing discussions on implementing measures to MiFID II which tend to adopt a very PRIIPs-oriented approach in relation to product information to be provided at the point of sale. Pursuant to ESMA's technical advice from December 2014, the UCITS KIID shall be considered insufficient for the purpose of MiFID product disclosure in terms of product costs and probably also regarding presentation of performance data. In our view, this approach effectively undermines the temporary exemption granted to UCITS and retail AIFs under the PRIIPs Regulation.

Q25: Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

Once again, we believe that the ESAs' powers to ensure consistent supervision are entirely sufficient. The ESAs have at their disposal a whole array of measures which can be used for enhancing consistency of financial supervision such as opinions and peer reviews on certain activities. Supervisory guidelines issued under Article 16 of the ESAs Regulations can be certainly considered the most effective tool for ensuring consistent application of the EU frameworks. Even though supervisory guidelines are formally based on the "comply or explain" principle, national authorities are required to make every effort to comply with the guidelines[21]. This requisite sets the "comply or explain" mechanism effectively out of force and in many instances renders supervisory guidelines factually binding.

However, this strong role the ESAs' guidelines play in remodelling the regulatory landscape of EU capital markets does not correspond with appropriate control procedures. In fact, supervisory guidelines issued by the ESAs are neither subject to oversight by EU institutions nor submitted to any right of appeal by the affected market participants or NCAs. This means that ESA guidelines, once issued, can be revised only by the decision taken by the Board of Supervisors of the relevant ESA. This non-existence of adequate checks and balances is not acceptable from a governance perspective. Thus, we urge the Commission to consider establishing a formal control and review mechanism in relation to the supervisory guidelines. Such mechanism could be facilitated by introduction of either a right of appeal against the guidelines or a requirement for a formal endorsement by the Commission.

Furthermore, consistent EU supervision should be supported by the development of harmonised data standards, formats and contents along the whole securities value chain under the auspices of the ESAs. The threatening jumble of different data standards, formats and contents presents a huge burden for the industry in both operational and financial terms and impedes efficient supervision concerning in particular macroeconomic risks.

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[20] Cf. Art. 32 of Regulation (EU) 1286/2014.

[21] Art. 16(3) of the ESAs Regulations (Regulation (EU) 1093/2010 for EBA, 1094/2010 for EIOPA and 1095/2010 for ESMA).

Q26: Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

No response planned.

Q27: What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

UCITS' access to liquidity for the purpose of collateralising derivative transactions is currently inhibited due to the ESMA Guidelines on ETFs and other UCITS issues. According to these guidelines, the purchase price of a repo contract shall be treated as collateral in itself and may not be reused or reinvested by the fund[22]. Since banks accept only a limited range of non-cash collateral (not included in all UCITS), liquidity demand in UCITS will increase with broader application of EMIR. The ESMA Guidelines deprive UCITS of the main liquidity source, as short-term credits are only allowed up to 10% of the fund's NAV and generally being used for handling fund redemption requests.

In this context, it should also be noted that the EU Commission granted pension funds a two-year exemption from central clearing requirements for OTC derivative transactions due to the fact that pension scheme arrangements hold neither significant amounts of cash nor highly liquid assets. Notwithstanding the above mentioned restrictions, UCITS do not benefit from a comparable exemption which in our view amounts to an unequal treatment of market participants. Under the current framework, the obligation by UCITS to hold more cash for the purpose of collateralising OTC derivative transactions will reduce the fund performance as it will diminish UCITS' ability to invest in profitable financial instruments.

Therefore, we encourage the Commission to work together with ESMA towards modifying the above mentioned provisions in the ESMA guidelines on ETFs and other UCITS and to allow UCITS to reuse cash obtained from repo transactions for providing collateral to OTC derivative trades.

Q28: What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

The major obstacle to integrated capital markets arising from corporate governance relates to the exercise of cross-border voting rights and the operational complexity of the voting chain. Any facilitation of cross-border voting and decrease of the operational complexity would help to overcome these obstacles. Though the SRD II aims at such facilitation it is unclear whether this will be sufficient in practice, in particular in case of larger voting chains. Efficient procedures allowing shareholders to vote easily should be in place.

In addition, shareholders should be able to exchange their views e.g. within a shareholder forum. Connecting through such forum, several minority shareholders could improve a company's corporate governance. In this respect, issuers should be required to set up a forum open for all their shareholders through their webpage. This would allow shareholders to easily access this and identify relevant co-

[22] Cf. para. 42, 43 letter i) and j) of ESMA Guidelines on ETFs and other UCITS issues (ESMA/2014/937).

shareholders. Furthermore, the legal risk to act in concert should be reduced. ESMA's white list clarifying shareholder cooperation in takeover situations has been helpful in this regard. However, the problem relates not only to takeover situations but generally to the attribution of voting rights and correct disclosure. If the requirements regarding the attributions are not entirely clear, shareholders tend to refrain from liaising with others in order to avoid the risk of incorrect disclosure of voting rights which entails significant legal consequences.

Additional voting rights which are currently discussed as a means to increase long-term shareholder engagement would in our view add a new obstacle to integrated capital markets: Since majority shareholders are often domestic entities, additional voting rights increase their influence while the minority shareholders, generally cross-border and individual shareholders, are disenfranchised. We hence urge the Commission to discourage any initiative for introducing additional voting rights.

Finally, divergences regarding preconditions for notifications of major shareholdings or related sanctions amount to a clear impediment for investing cross-border (cf. our reply to Q1 point 3).

Q29: What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

No response

Q30: What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

The green paper already includes two examples of barriers that should be looked at:

a) simplification of withholding tax relief procedures
b) distortions due to differences in the tax treatment of different types of financing across Member States, e.g. difference in the tax treatment of debt and equity financing.

<u>To a):</u> The Commission already consulted in 2011 on taxation problems that arise when dividends are distributed cross border to portfolios and individual investors and asked for possible solutions. Due to specific problems for collective investment vehicles (CIV) to achieve cross border treaty relief (unknown investor base), our favoured solution to solve the problem - also presented as one possible option by the Commission - was to generally abolish withholding tax (WHT) on cross border dividend payments. An alternative approach was to impose an EU-wide limit on the WHT-rate equal to the rate foreseen in double taxation treaties which is 15%. Those results may not be easily achieved for political reasons. Therefore, at least harmonised rules for treaty access of CIVs must be found. In this respect, we refer to the OECD Report "The granting of treaty benefits with respect to the income of collective investment vehicles" as well as to the work of the Commission's Tax Barriers Business Advisory Group. When the various projects looking at cross border tax relief procedures started it was widely acknowledged and reflected in the various studies undertaken by the EU Commission and the OECD that, in practice, claiming WHT relief under Double Taxation Agreements and/or a country's domestic tax laws is often cumbersome and time and resource intensive for governments, financial institutions, and foreign portfolio investors. As a result, end investors often are effectively forced to forego the tax relief due to

them and this has adverse effects not only on the investor, but also on the source country and the residence country. In addition, the process for claiming WHT relief has deteriorated over time in many countries, resulting in increased costs and protracted delays for cross-border portfolio investors to collect the tax relief owed to them.

To b) As a principle, in Europe debt financing is more tax favourable than equity financing. While interest or capital gains from debt instruments are regularly taxed at only one level (the investor), dividends and capital gains from equity instruments are mostly taxed twice, at the level of the instrument itself (e.g. a stock corporation) and at the level of the investor. Often there is no adequate compensation for the double taxation. In addition, interest payments are typically tax deductible for the issuer of the instrument, whilst dividend payments are not. Moreover, while income from interests (e.g. from government bonds) is decreasing very heavily at the moment, investors are looking more and more on adequately secure investment alternatives, especially on equity investments. The range of interested investors is very broad, encompassing not only private investors but also different groups of institutional investors (especially providers of retirement saving solutions like CIVs, pension funds and insurance companies). Due to common demographic reasons and the actual interest policy in Europe, especially the retirement sector is forced to invest more and more in equity instruments in order to be able to fulfil their obligations towards the increasing number of retirement savers at a later stage. Therefore, the taxation of equity investments should be at least equal to the taxation of debt investments in order to avoid distortions in Europe.

As a third point we would like to outline barriers that may arise due to the planned Financial Transaction Tax (FTT) in eleven Member States by way of an enhanced cooperation (the "FTT-Zone"). If only the FTT-Zone were to introduce its own FTT, this will exacerbate the risk of creating a two-tier financial sector and undermining the Single Market in financial services. The failure to implement the FTT on an EU-wide, fully standardised basis would lead to competitive advantage for "offshore" jurisdictions. In this regard, we would like to emphasize the following negative implications of the FTT:

- Asset managers would avoid the FTT by choosing to invest in other jurisdictions which would result in a significantly reduced financial activity in the FTT-Zone. This scenario can be supported by the fact that many companies listed on financial markets in the FTT-Zone are also listed on markets in the UK, US and Far East. Introduction of the FTT should lead to an even stronger migration of issuance activities to countries outside the FTT-Zone.

- UCITS marketed throughout Europe on the basis of an EU passport would be established outside the FTT-Zone e.g. in the UK.

- FTT would increase the costs borne by investment funds and will render EU investment funds more expensive compared to direct investments because the FTT applies additionally on investment funds' units instead of lowering the cost of capital. As a consequence, investments would be channelled to products not subject to FTT, such as insurance contracts or savings deposits instead of e.g. ELTIFs, or to non-EU investment funds. This would diminish the benefits of investment in funds on providing cost effective access to capital market investments to the mass public.

- An FTT that combines the application of the residence basis and the issuance basis on cross border transactions will require complex collection mechanisms that will increase costs and uncertainty for participants in capital market transactions.

For all these reasons, the plans for an FTT being introduced via enhanced cooperation only in eleven Member States are not consistent with the objectives of the CMU to "maximize the benefits of capital markets for the economy, jobs and growth" and should be withdrawn.

Q31: How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

As indicated in our responses to Q1, 6, 11 and 24 above, there is an urgent need for more integrated reporting, both transaction-based and holding-based, also in technological terms. The use of common reporting channels and standardised IT formats would enable regulators to better use the loads of submitted information for supervisory purposes, especially for prompt detection of systemic risk. The recent experience with regulatory and transaction reporting under AIFMD and EMIR, and the pending discussions concerning MiFID II/MiFIR and SFTR demonstrate that the uncoordinated implementation of different IT solutions by national authorities creates huge practical problems for firms operating cross-border and hampers effective collection and evaluation of data.

Furthermore, we urge the EU-Commission to ensure that all regulatory reporting requirements are accompanied by practical implementation deadlines which allow all market participants to implement new regulatory obligations on time. Lessons should be learned from the practical experience with EMIR reporting obligations where the lack of sufficient implementation time combined with legal and operational uncertainty due to undefined ESMA standards have significantly hampered the ability of the market to timely implement the relevant technical specifications.

Q32: Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

In this regard, we would like to refer to our reply to Q1 above where we identify the three main pillars supporting the notion of Capital Markets Union, namely equal standards of investor protection, coherent EU regulation across sectors and reduction of regulatory barriers to the efficient functioning of capital markets, including streamlined reporting of data. We believe that the specific issues identified in this regard should all be promptly tackled as they form prerequisites to the efficient functioning of the EU capital markets.