Frankfurt am Main,
19 June 2015

BVI's[1] responses to the "Questionnaire on barriers to free movement of capital" prepared by the EU Commission

***Q1:** In your discussions with market participants (retail and wholesale investors and borrowers), which country do they consider and what issues do they raise when planning cross-border transactions?*

For the German fund industry, Luxembourg and to a lesser degree Ireland play an important role as manufacturing hubs for investment funds. Cross-border management and marketing of funds, especially UCITS, is generally working quite well under the EU passporting rules. However, in some cases utilization of the EU passports is impeded by national gold-plating or discriminatory tax rules at national level. Additional requirements in relation to the passporting rules generally act as deterrents for middle-sized and smaller fund managers to offer their products cross-border. Also, the fees charged by host State authorities for the processing of notifications under the EU passport rules 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, provision of services in 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. Thus, it would be helpful to keep the administrative fees for cross-border notifications at a reasonable level.

Cross-border marketing of UCITS could be further enhanced by full harmonisation of product-related marketing rules and further bundling of supervisory competences at the home State authority of the fund.

***Q2:** Are you aware of obstacles your market participants have faced in trying to attract capital from other EU markets, in trying to invest in other EU markets or in trying to provide services in other EU markets? Please expand for:*

- *Borrowers trying to attract capital from another Member State?*
- *Investors trying to invest on public and private capital markets in another Member State?*
- *Entities trying to provide financial services in other EU markets?*

As regards provision of fund management services in other EU markets, please refer to our reply to Q1. Additionally, we would like to point out that the EU fund frameworks to date do not provide for the possibility to market retail AIFs cross-border on the basis of an EU passport. The ELTIF regulation has the potential to close this gap in relation to funds investing in infrastructure, real estate and other long-term assets. However, the conditions for the marketing of ELTIFs to retail investors are very demanding and entail high liability risks for the involved intermediaries. On this basis, we do not anticipate significant investments to flow into ELTIFs from the retail public.

[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.

In terms of fund investments in capital markets in other Member States, we would like to draw attention to the following existing obstacles:

- Lack of 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, 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. Thus, full harmonisation of the notification thresholds is very desirable from the viewpoint of large international investors. As a first step, we would suggest establishing a central database, possibly at ESMA, as an access point for information on applicable notification thresholds and sanctions for each Member State.

- Exercise of voting rights: Cross-border exercise of voting rights is still very burdensome, especially in view of the operational complexity of the voting chain. Though the SRD II aims at facilitation of cross-border voting, 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. Furthermore, the legal risk associated with acting 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. 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 the 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.

Q3: *In the following market segments, what are the main barriers to free movement of capital across borders that your market participants raise?*

- *Public markets for debt*
- *Public markets for equity*
- *Private markets for debt*
- *Private markets for equity*

The German fund industry is interested in liquid, transparent and stable equity and bond markets providing efficient capital allocation for issuers and investment opportunities for savers and retail/institutional investors. However, we fear that the current bond market environment combined with the upcoming MiFID II/MiFIR proposal tabled by ESMA 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 order to ensure a balanced approach for the classification of liquidity for fixed income products, we think that the instrument-by-instrument approach (IBIA) could be the preferred regulatory framework to calculate the liquidity for bonds. As a fallback position, 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. We also support developing further measures which could improve liquidity in the corporate bond market such as the usage of electronic trading platforms, standardisation of issuance for a limited subset of corporate bond products and bond covenants, as well as balanced treatment of research under the MiFID inducement rules.

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.

Q4: *In your view, for each of the barriers identified in Q2 and 3, what are the main causes? Who are the most affected market participants?*

Please refer to our answers above where we identify the relevant causes for each impediment. The impediments pertaining to the functioning of equity/bond markets and major shareholdings/exercise of voting rights generally affect all participants of the relevant markets.