



Frankfurt am Main,
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BVI's response to the Consultation Paper "Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU"

BVI¹ gladly takes the opportunity to present its views on the consultation paper on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU ("CRD") and Directive 2014/65/EU ("MiFID II"). Our members are asset managers providing management services to collective investment undertakings such as UCITS or AIF. Most of them are investment management companies within the meaning of Directive 2009/65/EC ("UCITS Directive") or Directive 2011/61/EU ("AIFMD") for which the CRD does not apply. However, for some of them the consultation at hand can be relevant if they are part of a banking group. In this regard, we do not agree with the proposed scope of application in the group context. The provision set out in paragraph 10 of the consultation paper could be misunderstood in the sense that these management companies shall be in scope of the guidelines. **Hence, we request the ESAs to explicitly clarify in their guidelines that investment management companies licenced under the UCITS Directive or AIFMD and being part of a banking group are out of the scope of the proposed guidelines.**

Firstly, the requirements of Article 9 MiFID II do not apply to investment management companies authorised under the UCITS Directive or AIFMD because they are excluded from the scope of the MiFID (cf. Article 2(1)(i) MiFID II). Moreover, the requirements of Article 91 CRD are limited to institutions in the meaning of the CRD. With regard to Article 3(1), point (3) of the CRD with reference to Article 4(1), point (3) of Regulation (EU) No 575/2013 (CRR), "institutions" are defined as credit institutions or investment firms. This definition does not include investment management companies in the meaning of the AIFMD or UCITS Directive. Therefore, the guidelines shall only apply to the management body of institutions in the meaning of the CRD and investment firms in the meaning of the MiFID.

Secondly, to be distinguished from the question of the application of the CRD and MiFID requirements is the responsibility of a parent company to ensure group-wide consistency as stated in Article 109 of the CRD. In particular, according to Article 109(2) of the CRD, the consolidating institution shall ensure that subsidiaries not subject to the CRD implement arrangements, processes and mechanisms set out in Section II of Chapter 2 of the CRD in a consistent and well integrated manner. This does not mean that such subsidiaries are required to "apply" the CRD requirements. The rule only seeks to ensure that subsidiaries which themselves are not subject to the CRD "implement" consistent processes and arrangements relevant to the purpose of supervision. It is of utmost importance to highlight that investment management companies are subject to their own specific requirements under the AIFMD and the UCITS Directive, in particular, regarding the authorisation for conducting collective investment management services and the requirements concerning the suitability of the management body. The CRD suitability requirements of the management body are not designed to reflect the specific business models of management companies. Therefore, it is important to ensure that the requirements of the AIFMD and UCITS Directive are applicable by priority in a group context. Otherwise this would lead to an inappropriate double regulation with regard to the management body which should be strictly avoided. Moreover, because the requirements of the UCITS Directive and the AIFMD are consistent with the requirements under the CRD, there is no need to extend the scope of the CRD to the non-bank entities such as entities subject to the AIFMD or the UCITS Directive.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 98 members manage assets of some EUR 2.8 trillion in UCITS, AIFs and discretionary mandates. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the investments for 50 million private clients in 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.