BVI’s position on ESMA Guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements

BVI gladly takes the opportunity to offer its views on ESMA Guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements.

We welcome the guidelines drafted by ESMA to establish consistent and effective interoperability arrangements between Central Counterparties (CCP). The guidelines will enable both the national competent authorities and CCPs to better understand and assess the rights, obligations and additional risks of the relevant CCPs and the processes and procedures to be followed for the proper functioning of the arrangement. The recommendations will further strengthen legal certainty for investors (e.g. investment fund management companies) who want to choose their preferred supplier of CCP clearing services which enter into interoperability arrangements.

We would like to make the following comments:

a. Guideline 2: Open and fair access

BVI supports the recommendation that a national competent authority should assess that interoperability arrangements ensure fair and open access and should only be refused or restricted due to justified risk grounds.

A trading venue shall provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorized to clear OTC derivatives traded on that trading venue upon request by a CCP. Our members are of the opinion that open and fair access to CCPs and trading venues will offer all market participants the ability to choose their preferred supplier of services. Fair and open access will enhance competition between CCPs which could reduce charges for post trade financial services by the investors.

We think that such nondiscriminatory access requirements should ensure that a CCP has to accept instruments for clearing regardless of the venue on which they are traded, and that a venue has to provide data feeds and other assistance to any clearing house that wants to clear the instrument in question. Market participants (e.g. investment fund management companies) should have the possibility to use their own choices of trading and clearing channel in order to fulfill their best execution obligation both pursuant to MiFID and additionally agreed with the investor.

1 BVI represents the interests of the German investment fund and asset management industry. Its 78 members currently handle assets of EUR 2.0 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI’s investor education programmes support students and citizens to improve their financial knowledge. BVI’s members directly and indirectly manage the capital of 50 million private clients in 21 million households. (BVI’s ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.
b. Guideline 4: Deposit of Collateral

BVI supports the recommendation that a national competent authority should assess that an interoperable CCP deposits collateral in a way that it is protected from the default of any interoperable CCP. Collateral provided by an indirect clearing member (e.g. investment fund management companies) through a clearing member to a CCP should be segregated according to the obligations pursuant to Article 39 of EMIR and should be deposited in a bankruptcy remote manner which cannot be used in the case of the default of any other interoperable CCP.

A CCP with interoperability arrangements should be able to demonstrate that collateral provided by the indirect clearing members (e.g. investment fund management companies) is available at any time when required, also in the case of the default of the interoperable CCP. This will enable the indirect clearing members to clear OTC derivatives as usual without any business restriction due to the default of any other interoperable CCP.