Frankfurt am Main,
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BVI's response to the ESMA Consultation Paper Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation

BVI[1] gladly takes the opportunity to present a general comment for the use of ISIN as an instrument identifier for OTC derivatives under MiFIR II/MiFIR.

We are a strong proponent of use of ISO standards (e.g. ISIN, CFI, LEI) along the whole value chain of the financial industry. We strongly support the usage of the ISIN as an instrument identifier for OTC derivatives under MiFID II/MiFIR. In that respect we fully support the position of the ECB[2] that the unique identification of issuers, offerors and guarantors and of securities offered to the public or admitted to trading on regulated financial markets can only be successful if international standards such as the global LEI and the ISIN are used.

Furthermore, we strongly agree with the work initiated by CPMI/IOSCO to develop a clear framework for the definition, format and usage of a UPI that meets the requirements of all market participants and global authorities to perform (global) data aggregation and to monitor exposure to, or positions in various groupings of (OTC) derivative products. We strongly support the idea that the UPI should be developed on the basis of open and globally regulated and accepted technical standards which are jurisdiction agnostic. The UPI concept should enhance the aggregation of data reported across a wide range of jurisdiction to multiple trade repositories. The concept of a global UPI could also be used in other areas of the financial industry.

Furthermore, it is of utmost importance that a global UPI is developed as a public good with no intellectual property rights attaching to it. The reporting financial counterparties should be able to obtain the UPI license free and free of charge. In that respect, we strongly encourage CPMI/IOSCO and all regulators worldwide to ensure that all identifier used in regulatory reporting should be available on a license and fee free basis. In this context, the development of the global UPI concept – which conceptually is sitting on the borderline of both classification of a group of similar but not identical instruments and the unique identification of a single instrument - should also be based as much as possible on the use of global ISO standards.

We believe that the priority must be on pushing the only universally accepted and government supported industry standard setting system, the ISO system. The control over the data and thereby the underlying markets which is maintained currently by the incumbent market participants with the help of proprietary standards is not acceptable going forward if we really want to enable a neutral aggregation of data and thereby support the control of systemic risk. Only the ISO standard governance offers a readily available global solution with standards (which may need to be amended) and an infrastructure in place which is acceptable to both the regulators and industry. Both the ISIN and the CFI standards cover today all financial instruments i.e. equities, bonds, exchange traded- and OTC-derivatives. Both

[1] BVI represents the interests of the German investment fund and asset management industry. Its 95 members manage assets of some 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 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.

[2] http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2016_15_sign_f.pdf

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could be amended especially on the level of the relevant allocation guidelines to accommodate the specific UPI-requirements, most of which will be specific data fields currently not covered by the standard.

We strongly believe that the ISO structure/organization at least with some nudging by the regulators across the globe is able to create a success story for financial instrument classification (CFI) and identification (ISIN) in the same way as ISO was able to create a global solution for entity identification with the LEI. Against the background of the likely requirement of use of ISIN for MIFID II /MIFIR reporting requirements, we also would welcome a further development of the ISIN allocation process from the current Association of National Numbering Agencies (ANNA) model to a more LEI ROC like model, including introducing more competition into the system by evaluating new numbering bodies both on the national ("NNA") and the global level ("GNA").

However, whilst we are fully cognisant of the issues raised by some market participants, we are concerned about the misperceptions being perpetuated in the current debate about the ISIN. Below, we highlight some of the misperceptions regarding the ISO 6166:2013 (the "Standard") and our reasons as to why these concerns are not founded:

1. The Standard does not provide for ISINs to be assigned to OTC derivatives

Whilst it is true that OTC derivatives are not listed in Annex A of the ISO 6166:2013 standard, this claim ignores the future proofing provision in Annex A which explicitly allows ISIN allocation for "other assets", being any type of financial instrument not otherwise listed in the Annex, including OTC derivatives.

2. The Standard allows only National Numbering Agencies to assign ISINs

The standard determines that ISIN assignment will be the responsibility of the Registration Authority (the "RA") and the Association of National Numbering Agencies (the "ANNA") having been appointed to that role, but it does not in fact place any such restriction on how the RA fulfils that responsibility. Note that National Numbering Agencies are mentioned only once in ISO 6166:2013 and that is only in the introduction section, which is informative and not normative.

3. The Standard demands that the prefix be a country code (or "XS" in the case of instruments issued through an ICSD), which would not be appropriate for OTC derivatives

In fact, the Standard allows for "other prefixes." More to the point, the Standard permits that the designated prefix for "other assets" is at the "discretion of the requester", which allows for flexibility to use any desired prefix for OTC derivatives.

4. The Standard does not allow assignment of ISINs at multiple levels of granularity

This is inaccurate. The scope provides for the identification of "fungible and non - fungible securities and financial instruments," thus allowing ISINs to be assigned to buckets of instruments with similar characteristics and at different levels of granularity, as desired.

Turning to the ANNA guidelines, which determine the implementation of ISIN assignment, whilst it is true that these do not extend to OTC derivatives presently, this is because there has not been sufficient demand until now. Additionally, the Standard in fact requires the RA "to continuously adapt the ISIN guidelines for allocation and registration of ISINs to meet the needs of the market." This is rather instructive as the Standard obliges ANNA to extend those guidelines in an appropriate way to address the newly emerged market need to assign ISINs to OTC derivatives.

To this end, an ISO Study Group has been formed and tasked to assist ANNA in creating a more formalised framework to address the assignment process for OTC derivatives, which may be done separately from the current process by one or more agencies that are not necessarily National Numbering Agencies. BVI participate actively in this Study Group.

The ISO is ready and willing to do what is required to extend the scope of ISIN to cover OTC derivatives. It is of vital importance that the wider industry is not mandated to use proprietary standards promulgated by the derivatives industry.