Frankfurt am Main,
22 April 2016

BVI`s response to the ESMAs Discussion Paper on the Draft RTS and ITS under SFTR (ESMA/2016/356)

BVI[1] welcomes the opportunity to comment on the ESMAs Discussion paper on draft RTS and ITS under the Securities Financing Transaction Regulation (SFTR).

We strongly support the work started by ESMA to harmonize data content, format and standards on the basis of ISO 20022 for data collection and aggregation on securities financing transactions that are relevant for financial stability monitoring. The proposed content of the data fields for securities financing transactions could be implemented and be reported by the German management companies to a trade repository (TR). However, the implementation of such data standards and processes in the financial industry should be carefully calibrated and not be rushed. In this context, the introduction of the EMIR reporting obligation should not be used as a model for the regulators as the implementation of this reporting regime was very complex and burdensome due to time constraints and lack of legal and operational certainty. Furthermore, we strongly encourage ESMA to develop the new technical standards on pre-existing infrastructures, operational processes and formats (e.g. EMIR, MiFID/MiFIR, AIFM) in order to reduce the operational and compliance burden for the reporting counterparties (e.g. UCITS/AIF management companies). In this context, EU Commissioner Hill mentioned that the existing reporting requirement, formats and templates should be streamlined in order to lighten the compliance burden. [2]

We strongly agree with the timetable as laid down in Article 33 para (2) (a) (iii) of the SFTR that the implementation of the new technical standards should only be made mandatory for the reporting financial counterparties (e.g. UCITS/AIFs) eighteen months following the publication of the Regulation in the Official Journal. This presumes that the trade repositories (TR) are able to provide the new data field requirements to the reporting counterparties promptly after the publication of the Regulation in the Official Journal. The implementation of the proposed new data fields by the management companies depends on the obligations laid down by the TRs on the reporting counterparties. Otherwise, management companies are not able to implement the new obligations meaning that incorrect SFT reports will be sent to the TRs.

Furthermore, the IT service providers which provide the IT fund accounting systems for the asset management companies can only implement the new reporting fields on the basis of the final technical standards. All required data fields need to be specified in detail, preferably on the basis on ISO templates. This will reduce divergent interpretation of the reportable items. Based on the final specifications made by the trade repositories and the IT service providers the management companies are able to implement the reporting.

Highly regulated investment funds already have to adhere to the reporting obligations of securities financing transactions as required by the UCITS/AIFM Directive and the National Central Bank. ESMA

[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://europa.eu/rapid/press-release_SPEECH-16-1527_en.htm

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and National Regulators should also take into consideration this information in the development of the ITS/RTS.

- **Specific comments**

Q11: Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format you would propose and what would be the benefits of the alternative approach?

Yes, we strongly agree with the proposal to use ISO 20022 as the format for reporting of securities financing transactions. We are a strong proponent of use of ISO identification and transaction standards (ISO 15022) along the whole value chain in the financial industry. In our view, ISO 20022 would be the most appropriate standard.

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, reporting and interoperability. We believe ISO 20022 brings following benefits:

- ISO 20022 is the standard used for messaging by strategic initiatives such as the Single Euro Payments Area (SEPA), in the ECB's Target 2 Securities initiative, the upcoming migrations of Target 2 and EBA EURO1/STEP1

- ISO 20022 enables higher levels of automation and interoperability across payments and securities, reducing overall industry costs and lowering barriers to entry; based on MiFID II /MiFIR transaction reporting and reference data on ISO 20022 will enable all market participants to reuse the investment in supporting the standard

- ISO 20022 can easily cater for future additional/new regulatory reporting functionalities including changes to the SFT reporting components

- ISO 20022 is an open standard which can be freely implemented, with an open governance process and no single entity that controls it; it has an established process for maintenance and evolution

- ISO 20022 is being adopted globally in the financial industry: Central banks and market infrastructures across the world are increasingly using the standard, with around 70 payments and securities clearing and settlement systems implementing ISO 20022

- ISO 20022 standards have been developed across many financial business processes including retail and wholesale payments, foreign exchange, clearing, collateral management, settlement, asset reconciliation and transaction reporting, investment fund processing, clearing, collateral management, settlement (e.g. t2S), asset reconciliation and transaction reporting (e.g MiFID).

Q12. How would the proposed format comply with the governance requirements in paragraph 75? Please elaborate.

We strongly support the proposed characteristics in para 75 that the reporting format and content should be based on open and transparent standards and should be subject to a robust governance structure managed by the regulatory community. 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. 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 ISO 2022 data content and format in the same way as ISO was able to create a global solution for entity identification with the LEI.

Important to note in this respect is the creation of the Derivatives SubSEG within the ISO 20022 Registration bodies framework which will be responsible to evaluate new ISO 20022 message proposals in the derivatives and potentially the SFT area. Membership of the ISO 20022 Registration Bodies - that is, the RMG, SEGs and TSG - is open to any entity that has an interest to participate so long as that entity fulfils the criteria of membership, cf. https://www.iso20022.org/membership.page. For a more detailed description, a copy of "ISO 20022 For Dummies" can be requested at www.iso20022.org.

Q13: Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

We do not see any difficulties.

Q14. Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?
Q15. Are there cases for which these definitions leave room for interpretation? Please elaborate.

Yes. We do not agree with the proposed definition in para 96 and 97 in respect to highly regulated investment funds (UCITS/AIFs). The proposal covers only market participants acting on their own account as counterparty of an SFT. In some EU Member States, investment funds are established in accordance with contract law meaning that UCITS/AIF management companies enter as legal counterparty into SFTs (e.g. security loan transactions). In such cases, the management company is acting for the joint account of the investors of the relevant investment fund. The asset management company does not act as broker and it does not act as intermediary as further explained with respect to CCPs in para 98.

We strongly encourage ESMA to clarify the proposed definition of a party to an SFT taking into considerations the EU fund regulation requirements in respect to highly regulated investment funds constituted in accordance with contract law (Article 1 para 3 of 2014/91/EU Directive).

Q16. Is it possible to report comprehensive information at transaction level for all types of SFTs and irrespective of whether they are cleared or not?
Q17. Is there any need to establish complementary position-level reporting for SFTs? If yes, should we consider it for particular types of SFTs, such as repo, or for all types?

Comprehensive information for all types of STFs cannot be reported at transaction level. For instance, collateral is mainly not collected at transaction level. Global Standardized Master Agreements include a mechanism by which the total exposure but not an individual transaction needs to be collateralized.

We support in general the idea to establish a complementary position-level reporting for all SFTs allowing the reporting counterparties (e.g. UCITS/AIF management companies) to report necessary SFT details (e.g. collateral) at a later point in time. However, the proposed position-level reporting lacks a clear definition of the applicable data fields. As long as these data fields are not defined the SFT trade repositories should give the reporting entities the flexibilities to provide such data on a voluntary basis. Furthermore, we encourage ESMA to clearly define the data elements to be used only for a position level reporting in order to improve the operational certainty during the implementation by the reporting counterparties.

Q18. Is there any need to differentiate between transaction-level data and position level data on loans from financial stability perspective? Please elaborate.

We do not see such a requirement for UCITS and AIFs. Due to EU fund regulation UCITS/AIFs have to comply with counterparty risk limits and are not allowed to agree on security loan transactions with a fix term. Such transactions are fully collateralized. In Germany, under-collateralization needs to be reported immediately to the Competent Authority BaFin. Therefore, UCITS/AIF do not pose any financial stability risk related to loan transactions and should therefore be exempted from any additional data fields by the regulators for the purpose of financial stability.

Q22. From reporting perspective, do you foresee any significant benefits or drawbacks in keeping consistency with EMIR, i.e. applying Approach A? What are the expected costs and benefits from adopting a different approach on reporting of lifecycle events under SFTR with respect to EMIR? Please provide a justification in terms of cost, implementation effort and operational efficiency. Please provide concrete examples.
Q23. Do you agree with the proposed list of "Action Types"? If not, which action types should be included or excluded from the above list to better describe the SFT? Please elaborate.
Q24. Do you foresee any benefits or drawbacks of implementing the proposed reporting logic of event types and technical actions (Approach B)? Please elaborate.
Q25. Do you agree with the proposed list of event types and technical actions? If not, which ones should be included or excluded?

We do not consider any significant drawbacks to implement both an "Action Type" and an "Event Type" reporting scenario. We strongly support ESMA`s approach to keep consistency as far as operational practically with the existing EMIR reporting scenarios in order to reduce the operational implementation burden for the reporting counterparties. The SFT trade repositories should be enabled to use the existing EMIR reporting channels/requirements as a starting point for discussion for the new SFT obligations including the data fields. Furthermore, all authorized and registered SFT trade repositories should follow the same reporting approach as envisaged by ESMA and should not be allowed to use different approaches. Otherwise, reporting counterparties have to implement different reporting logics provided by the trade repositories, thereby complicating the consolidation of the SFT trades on a TR level.

Q26. Do you foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions? Please elaborate.

No, we agree with the assessment that a unique reference identifier should not be made mandatory for lifecycle events or for technical actions at this stage as there is no experience in the market place with such identifiern. It may be worth firstly to explore the experience of corporate action identification in particular the “Corporate Action Event Reference” (COAF) as a possible starting point for discussion. In this context we are of the view that a UTI concept for the SFT reporting obligation should only be implemented if the UTI approach for EMIR reporting is successfully launched.

Q27. From reporting perspective, do you foresee any drawbacks in keeping consistency with EMIR? If so, please indicate which ones?

No. we do not envisage any drawbacks. As mentioned above, the SFT reporting obligation should be as operationally aligned with the EMIR reporting requirements.

Q28: Are the proposed rules for determination of buyer and seller sufficient? If not, in which scenarios it might not be clear what is the direction of the trade? Which rules can be proposed to accommodate for such scenarios?

- **Repo and sell-buy back/buy-sell back transactions**

We agree with the assessment.

- **Securities or commodities borrowing and securities or commodities lending transactions**

We do not agree. If ESMA prefers to identify the role of buyer/seller, it should make the borrower but not the lender a buyer as the borrower pays for receiving the securities lent.

Q29: Are the proposed rules consistent with the existing market conventions for determination of buyer and seller? If not, please provide alternative proposals.

No. The role of market participants is determined by the role specified in the transaction. Especially security loan transactions do not refer to buyers and sellers but to lenders and borrowers.

Q30. Are you aware of any other bilateral repo trade scenario? With the exception of tri-party agents that are documented in section 4.2.5, are there any other actors missing which is not a broker or counterparty? Please elaborate.

Yes. In some Member States most UCITS and AIFs are constituted in accordance with contract law. In such scenario, the asset management company is acting for the joint account of the investors of the relevant investment fund. However, analog to Article 9 of EMIR, UCITS/AIFs should be identified as counterparties with the LEI rather than the fund management company although it is always the management company who becomes the contractual party. In cases where the relevant management company of an investment fund has outsourced the portfolio management to a third party, ESMA should evaluate if the portfolio management insourcing company should be identified as broker.

Q31. Do you consider that the above scenarios also accurately capture the conclusion of buy/sell-back and sell/buy back trades? If not, what additional aspect should be included? Please elaborate.
Q32. Do you agree with the description of the repo scenarios?

Yes, we agree

Q33. Are you aware of any other repo scenarios involving CCPs?

No. Currently, most of our members do not use a repo scenario involving a CCP.

Q38. Are there any differences in the parties involved according to the different agency lending models?

We would like to highlight the point that security lending is not repo transaction and vice versa. Repos are concluded for accessing liquidity. Counterparties enter into security loans as they require a particular security. One cannot replace the other. For that reason, ESMA's assumption in para 156 including foot note 15 is wrong. According to our observation, principal-to-principal security loan transactions are used by German management companies (securities lending scenario 1). However, some of our members use also the structure of securities lending trades with the interaction of an Agent Lender. In such case, the Agent Lender does only operate as proxy.

Regarding the less common structure of agency lending, the two different models can be explained by the fact that the English term "agency" covers two different legal structures. In the first structure (securities lending scenario 1), the Agent does not become party to any security loan transaction. It does only act as a proxy in the name of one of the counterparties. In the second possible lending scenario, the Agent Lender becomes the counterparty to the security loan transaction. The relationship between the Agent and the client could be called "brokerage" meaning that the client can request whatever the Agent receives from the other counterparty of the securities loan transaction while the Agent is entitled to reimbursement with respect to any obligations arising under its security loan transaction with the other counterparty. The latter is also called "undisclosed agency". The Agent Lender acting as counterparty to the transaction is not obliged to disclose to the other counterparty its clients which whom the Agent has agreed on brokerage prior to the security loan transaction.

Q39. When would the both counterparties know the other's identity in an undisclosed lending agreement?

We refer to our response to Q38. Under an "undisclosed lending agreement" the counterparties always know each other.

Q40. What other solution would you foresee for the reporting of trades involving the agent lender? Please elaborate.

ESMA should focus the reporting on the legal counterparties to the securities loan transactions. If in securities lending scenario 2 the Agent Lender becomes counterparty, the Agent should be disclosed in a report.

Q46. Do such securities lending transactions exist in practice?

We are not aware of such a practice. Securities loan transactions entered by management fund companies for the joint account of the investors of UCITS/ AIF are fully collateralized.

Q47. Do you agree with the proposal to explicitly identify non-collateralised securities or commodities lending transactions in the reporting fields? Please elaborate.

Yes we agree. Such identification might help the regulators to understand that UCITS, AIF and their managers do not pose any systemic risk in the SFT industry as they only engage in collateralized transactions.

Q53. What are the main types of commodities used in SFTs?

None. It is our understanding that SFTs on commodities only make sense, if physical commodities are used. Such understanding is based on the definition of commodity, Article (3) number (17) of SFTR which refers to Article (2) number (1) of Regulation (EC) No. 1287/2006. Those commodities, however, are not eligible assets for UCITS/AIFs. For that reason, there are no types of commodities that could be used by investment fund management companies.

Q69: What potential issues do reporting counterparties face regarding the reporting of margin account/credit balances?

It might be difficult to transfer (and possibly summate) real-time balances of bank accounts into the reporting systems.

Q70: How is information regarding the market value of short positions in the context of margin lending used by the lender (if at all)?

Short positions are prohibited for UCITS and most AIF. ESMA should clarify, if in such cases “zero” shall be provided as value of short positions.

Q72. Do you foresee any issues with reporting information on SFT involving tri-party by the T+1 reporting deadline? If so, which ones – availability of collateral data, timeliness of the information, etc.? Please elaborate.

In general, we agree that the relevant information involving tri-party agents is available to the reporting counterparties in order to meet the reporting deadline on T+1. However, it might be possible that not all relevant details, especially settlement information is available on time as collateral might settle later. Therefore, the reporting entities do not have all settlement details available on T+1.

Q73. Would you agree with the proposed split between the counterparty and transaction data?

Yes, we agree with the approach.

Q80. Do you agree with the proposal to link the legs of a cleared transaction by using a common identifier?
Q81. Could you suggest robust alternative ways of linking SFT reports?

Please see our answer to questions 26. In the context of the introduction of a UTI concept for SFT transactions, we are of the view that a UTI concept for the SFT reporting obligation should only be implemented if the UTI approach for EMIR reporting has proved to be successfully implemented.
A clear UTI framework for SFTs - analogue to the implementation of the UPI approach for EMIR – is necessary in order to avoid any inconsistencies by the reporting counterparties. In that respect, the reporting counterparties need a clear UTI framework including also the responsibilities of creating and transmission of UTIs to the counterparties. We think that the Sell-Side should create and transmit a UTI to the management companies. The UTI should be transmitted to the other counterparty on a standardized and automated basis enabling the counterparty to report the required UTI data field to the TR in time with no manual intervention. Furthermore, a consistent UTI should also take into consideration the possibility to link the legs of a cleared transaction by using a common identifier.

We strongly support the work started by IOSCO to establish a global UTI for the derivative reporting obligation. As a starting point of discussion, a similar global UTI concept could be developed for the SFT reporting.

Q83. Is the assumption correct that manly securities lending would require the reporting of cash collateral? If no, for which other types of SFTs is the cash collateral element required? Please elaborate.

No. Due to the current market environment, it could occur that some market participants do not accept cash collateral. Negative interest rates on cash balances reduce income.

Q85. Do you foresee any issues on reporting the specified information for individual securities or commodities provided as collateral? If yes, please elaborate.

Collateral is provided for the total exposure and not for a single SFT. We think it should be sufficient to report only the Collateral Market Value. In Germany, normally, all SFTs are over-collateralized. Management companies are obliged to immediately report any under-collateralization to the German NCA BaFin.

Furthermore, management companies apply a haircut strategy on top of the over-collateralization on a voluntary basis. The reporting of individual haircuts is a huge burden for the fund management companies. According to security loan transactions, Collateral Annexes have up to 30 pages listing classes of assets and haircuts are negotiated individually with all counterparties. It is obviously that the implementation of different haircut policies to be reported to TRs is very complex and burdensome. Therefore, the reporting of haircuts should not be made mandatory for the reporting entities.

ESMA should take into account that the ESMAs Guidelines on ETFs and other UCITS issues (para 46) requires that UCITS (and in Germany AIFs) needs to set up a clear haircut policy for each class of assets received as collateral (it does not differ between OTC derivatives or other types of transactions as collateralized transaction). The ESAs published a RTS on Article 11 of EMIR on March 8, 2016.[3] According to this RTS the ESAs have included tight requirements for the calculation of haircuts. In light of the ESMAs Guidelines, those requirements will also automatically apply to haircuts considered with

[3] https://www.esma.europa.eu/press-news/esma-news/esas-publish-final-draft-technical-standards-margin-requirements-non-centrally

respect to SFTs. This can be seen as an additional reason, why it should be sufficient to report market value of collateral as well as the value of the obligation that is collateralized.

We think it should be sufficient for management companies if ESMA considers a regulatory approach which is successful implemented in Germany since many years: If the market value of the collateral collected is below the value of the obligation to be collateralized, market participants should be required to immediately report the under-collateralization to the NCA explaining the reasons for under-collateralization. In case of such a report, it would be up to the NCA to request any and all "micro-information" it is interested to consider for the purpose of financial stability.

Furthermore, we do not consider it as appropriate to report in the collateral elements the Issuer LEI as the reporting entities have to add and maintain the Issuer LEI in the IT systems and data base which is very complex and burdensome.

Q86. Are there any situations in which there can be multiple haircuts (one per each collateral element) for a given SFT? Please elaborate.

Yes, if securities collateral involves more than one ISIN.

Q87. Would you agree that the reporting counterparties can provide a unique identification of the collateral pool in their initial reporting of an SFT? If no, please provide the reasons as to why this would not be the case.

No. Master agreements governing SFT include the concept by which no single transactions are collateralized, but separately the total amount of the transactions. There is no situation where collateralization is allocated on a transaction level basis. Collateralization will always take place via a "collateral pool". We do not see the benefit of giving such pool a particular name/identifier.

Q88. Are there cases where a counterparties to a repo, including those executed against a collateral pool, would not be able to provide the collateral with the initial reporting of the repo trade? If yes, please explain.

Typically counterparties agree on a minimum transfer amount in order to mitigate the costs for posting collateral back and forwards. As the purchase price agreed under a repo reflects the current market price there should not be any situations where collateral is required in a volume greater than the minimum transfer amount before the first report.

Q89. Are there any issues to report the collateral allocation based on the aforementioned approach? Please elaborate.

As explained above, we do not see the requirement for a collateral pool identification element that it is already sufficiently identified by the LEI of the counterparties.

Q91. Which option for reporting of collateral would be in your opinion easier to implement, i.e. always reporting of collateral in a separate message (option 2) or reporting of collateral together with other transaction data when the collateral is known by the reporting deadline (option 1)?

As mentioned in our answer to Q16 and Q17, we are of the view that the reporting of the collateral in separate message could be a preferable solution (Option 2).

Q92. What are the benefits and potential challenges related to either approach? Please elaborate.

Option 2 offers the benefit that implementation could be supported by what has already been implemented in order to comply with Article 9 of EMIR.

Q93. Do you foresee any challenges with the proposed approach for reporting updates to collateral? What alternatives would you propose? Please elaborate.

We fully agree with ESMAs proposal to report the full snapshot rather than a delta.

Q94. Is it possible to link the reports on changes in collateral resulting from the net exposure to the original SFT transactions via a unique portfolio identifier, which could be added to the original transactions when they are reported?

No, that is not possible. Changes in collateral may also happen without a change in the portfolio, especially where the value of collateral changes. The original SFT transactions are only relevant if the calculation of the total amount is necessary and revised margin call on this basis is necessary.

Q95. Do you foresee any difficulties related to the linking of the collateral report to the underlying SFTs by specifying UTIs of those SFTs in the collateral report?

The collateral report would include all SFTs between the parties. For that reason the link is given by the identity of the counterparties specified in the collateral report and no UTIs are required.

Q96. Are there additional options to uniquely link a list of collateral to the exposure of several SFTs to those specified? If yes, please detail them.

Please see our response to Q 95.

Q97. What would you deem to be the appropriate option to uniquely link collateral to the exposure of several SFTs? Are you using any pro-rata allocation for internal purposes? What is the current market practice for linking a set of collateralised trades with a collateral portfolio? Please elaborate.

UICTS/ AIFs use SFTs which are fully collateralized without exemption. Therefore the link is given automatically.

Q98. Do you foresee any issues between the logic for linking collateral data and the reporting of SFT loan data? Please elaborate.

The relevant data could be obtained in a much easier way. If the counterparties are identified, the total value to be collateralized as well as the value of collateral provided should be sufficient. In any case of under-collateralization, National Competent Authorities should request a report with further details.

Q104: What are the metrics used (other than LTV ratios) to monitor leverage from margin lending, and more broadly to address risks related to the value of collateral? How are these calculated?

We do not see any leverage in that context. However, if ESMA intends to refer to derivatives as instruments for leverage, UCITS/AIFs are subject to the cover rule and have a limitation related to the leverage.

If ESMA considers the collateralization of claims a lender has against the borrower, there are no metrics. Those claims are collateralized via a pledge and the pledge automatically covers the extent of the collateralized obligation.

Q112: What are the obstacles to the reporting of reuse of collateral for transactions where there is no transfer of title? What are the current market practices aimed at mitigating risks from collateral re-use specifically in the context of margin lending?

If collateral is pledged, according to the agreement with the collateral provider, the receiver of collateral is not entitled to “re-use” collateral received.

Q114. In which cases can the re-use be defined at transaction level?

UCITS and other regulated investment funds are not allowed to re-use securities collateral.

Q120. Do you agree with the rationale for collection of information on the settlement set out in this section?

No. UCITS/AIF management companies should not be obliged to report settlement relevant fields. Fund management companies are usually not a direct member of a CSD. Therefore, we are concerned that such fields are not delivered on time in order to make a reporting to the TR.

Q122. Do you agree with the approach to identify the settlement information in the SFT reports?

No, please see our answer to question Q120.

Q125. Will this information be available by the reporting deadline? What are the costs of providing this information?

Yes, the reporting of the Master agreement information could be delivered. However, such legal agreements need to be collected and stored in the IT systems in order to be delivered on time to the TRs which requires additional implementation costs for the reporting entities.

Q127. Do you agree with the proposed categories of trading methods to be reported by SFT counterparties?

We do not agree that such information is relevant to be reported as it is too burdensome to collect such data on time.


BVI