# Comments

## on the European Commission's Green Paper on "Building a Capital Markets Union"

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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## 1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?

The German Banking Industry Committee (*Die Deutsche Kreditwirtschaft* – "GBIC") supports the Commission's plans to create a Capital Markets Union, in principle, as well as the related objective to promote investments throughout Europe. In order to strengthen investment for the long term, stimulating public sector and private demand is crucial. We support the statement of the EU Commission that each new regulation must be designed to support the real economy and thus to promote growth. Furthermore, we agree with the European Commission that especially small and medium-sized enterprises (SMEs) are key drivers in terms of growth and jobs.

The primary objective of the Capital Markets Union is to achieve higher level and more stable economic growth in Europe, and to expand and improve the financing conditions of the European economy. In order to achieve this objective, the proposed measures should be divided – from an organisational perspective – into two equal pillars:

In addition to risk-appropriate measures designed to improve the functioning and performance of the capital market in Europe, additional measures are required in order to improve and strengthen credit financing of banks and savings banks. This is the only way to complement the rather long-term oriented credit financing provided by banks and savings banks with its long tradition in Europe with the benefits of capital market financing (flexibility, sharing of risk, new financing sources by including global capital market players and larger sections of private investors) in order to improve financing conditions of the European economy.

However, with regard to the financing of small and medium-sized enterprises in all European regions, we would like to point out that the regulatory costs, a lack of expertise, and the effort required for capital market financing – as well as the high credit quality requirements of capital market investors – are clearly market entry barriers for many SMEs. For this reason, SME bonds will not be an equal replacement for bank loans and sound relationship banking. In addition, the banking sector fulfilled its duties in terms of corporate financing during the financial crisis – at least in Germany. The feared credit crunch in 2009 failed to materialise. Thus, the performance of the European banking system should be the first priority – especially with a view to the peripheral member states of the euro zone. However, it should not be overlooked in this context that the restrictive access to credit in these countries also results from the poor credit quality of many companies as a consequence of the full-scale economic downswing.

Nevertheless, due to numerous regulatory requirements introduced over the past decades, the costs incurred for granting a loan and other financing services provided to the economy increased. We have observed that – as a consequence – a portion of the traditional banking business migrated to the unregulated sector. This means that stricter banking regulation is in conflict with the merely planned regulation of “shadow banks”. Thus, with regard to fair competition, harmonisation of rules and regulations applicable to the unregulated sector and banks should take place. Furthermore the transfer of risks cannot be in the interests of politics.

Therefore, we propose the following short-term measures, which should have priority over the above-mentioned initiatives:

1) Review and balancing of the current and proposed financial markets regulation with the objective of improving the financing of the economy.

   The structure of the Capital Markets Union should be enshrined in a comprehensive EU strategy. Without question, any inconsistent financial markets regulation might threaten growth within the EU. Any negative interaction between initiatives already adopted (or being discussed) – or conflicting provisions governing the same facts – impede investment, and are a major burden for the banking sector. Before creating new rules, there should be a comprehensive analysis of the effects and cross-relationships of existing banking and capital market rules (as well as those not yet in force). Considerations with regard to the Capital Markets Union should also be used to identify and lift short-term barriers in the form of overly bureaucratic regulations.

2) Improved application of the principle of proportionality for banks and savings banks, allowing them to fulfil their financing role in future, in particular with regard to SMEs.

   The objective of safeguarding SME financing could be achieved with the following measures, for example:

   - Introduction of lending tests: existing and future regulatory initiatives should be reviewed as part of an impact assessment on the lending capacities of banks and savings banks, in order to ensure that small and medium-sized enterprises have unrestricted access to bank credit.

   - The special capital requirements for SME loans must be maintained in the long run. In addition, promotional lending as well as liquidity from financial services networks should not be considered in the Leverage Ratio. Moreover, leeway should be provided to consider updates in the scope of transposition into national/European law of financial markets regulations resolved for an improvement in corporate financing (for example, in the current review of the Net Stable Funding Ratio).

Referring to the broadening of the investor base, one of the Commission's objectives supported by us, it should be noted that various national and European regulations introduced throughout the past few years were contradictory to this objective – and in fact led to additional barriers particularly for retail clients, keeping them from investments on the capital market.

Appropriate advice is of great importance to retail clients before they access the capital markets. Such advice is provided in particular by credit institutions, and individual retail clients many times only learn about the important role of capital market products from their banks (see also question no. 19). However, from our experience in Germany we know that it may lead to unintended effects, if the regulation of such advisory services

is taken too far. This applies in particular to the exaggerated requirements regarding the permissibility of inducement-based investment advice proposed by ESMA for level 2 of MiFID II currently under discussion. They place in question the decision of the European legislator to maintain a choice between inducement-based investment advice and fee-based investment advisory services. The offer of personal investment advice is regarded as added value by many clients, something which has been confirmed by several surveys. This service, however, is mainly paid for through inducements. As important as investor protection might be, exaggerated requirements will potentially encourage banks and savings banks to withdraw from their role as mediators, due to cost and liability restrictions. This also leads to declining capital market access on the part of retail clients. It is therefore of great importance to ensure in the drafting of the legal acts implementing MiFID II that the offer of personal investment advice to a large number of retail clients continues to be feasible and thus possible for banks.

GBIC therefore supports the European initiative to strengthen the equity culture. This comprises simplified regulations for equity advisory services. Regulations must also take into account that the attractiveness of investments in equities largely depends on their accessibility for large parts of the population.

It is with great concern that we noticed ESMA's plans to apply product governance requirements within the scope of MiFID II on execution-only business (see also question no. 17).

**2. What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?**

From the perspective of GBIC, the following arguments are contradictory to an aggregation of credit information in a supplier-independent, simple and uniform scoring model:

The assessment of creditworthiness is a decisive parameter of competition. It is the core objective of a competitively organized financing system to be able to produce appropriate credit ratings. This is one key element in the efficient allocation of capital flows in a national economy. The provision, preparation and assessment of such information is complex and not freely available. Such efforts must therefore be considered economically in an appropriate manner for respective intermediaries. Thus, a general disclosure requirement for credit information cannot be claimed from our perspective.

In addition, the majority of European companies are dominated by privately and/or family-owned business structures. Such companies are reluctant to provide extensive disclosure of company-related information. This is particularly the case for start-up companies, since the founders fear to lose their potential competitive advantages by providing too much transparency during the early stage of the company's life cycle. The provision of company and credit information should therefore be made on a voluntary basis, and not be compulsory. For instance, such information could be gathered if a company intends to address larger and international investor groups within the scope of capital market financing. Furthermore, the effort required to provide the necessary data

is significantly higher for a direct access to the capital market than for the extension of bank loans. For smaller enterprises, direct access to the capital market is no option.

Investor groups unwilling or unable to provide their own risk management system (valuation or scoring tools, internal ratings, etc.) may refer to commercial providers for such information. The market for credit information works fine in this respect. The provision of such information through a public authority could have a distorting effect on the functioning of the market.

Credit institutions are important partners for investors on the capital market in addition to commercial providers. Especially for the promotion of cross-border capital movements, local credit institutions may provide important credit information based on their tight relationships with local companies. This competence in terms of risk competence is crucial for international investors. Credit institutions are also an important intermediary for companies that would like to avoid the disclosure requirements necessary for certain capital market products.

In any case, data protection requirements would have to be respected in a scoring process. Corporations seeking to raise capital should not be flooded with bureaucratic and other disclosure requirements. We also take a critical stance on any requirements for the publication of competition-relevant data (business secrets, etc.). This would ultimately lead to counter-productive effects and increase – not decrease – access costs for financing.

Should the initial question refer to the creation of a separate external rating product for SMEs, this would not be supported by GBIC as long as such rating is not offered by a rating agency registered with ESMA. To date, such ratings for SMEs were more of a niche product; given the regulatory initiative to reduce undue reliance on external ratings, political support for such a project seems out of all reasons.

GBIC requests disclosure of the participant list for the credit scoring workshop (see page 10 of Green Paper) planned to be held in summer 2015. We regard the participation of representatives of the German banking sector as necessary.

**3. What support can be given to ELTIFs to encourage their take up?**

Regulation of securitisation instruments that would allow ELTIFs to invest in portfolios with securitised SME loans would be helpful, promoting the ETLIF objective of "smart, sustainable and inclusive growth". However, incentives enabling ELTIFs to extend loans directly to corporations under simpler conditions than banks are not part of the principle of a level playing field, and could have a significant impact on financial market stability.

Furthermore, eligible assets of ELTIFs should be extended with respect to closed-end AIFs, currently not under the ELTIF-Regulation. Additionally, details for redemption rights should be implemented on level II.

**4. Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?**

In this context, GBIC draws attention to the successful and long-term tried-and-tested practice of the German promissory note loan ("Schuldscheindarlehen").

Schuldscheindarlehen represent an important corporate financing alternative to loans and bonds. The instrument is known for relatively low transaction costs, and is thus very suitable to provide a simple, cost-effective and straightforward access to the capital markets for medium-sized (as well as large) companies fit for such markets. This is also reflected in international demand from investors, who increasingly appreciate this type of investment due to the long-term safety provided by the German legal framework - as well as the corresponding lean and flexible documentation (about 1-15 pages).

In 2014, the market for Schuldscheindarlehen had a total volume of EUR 68.7 billion; EUR 11.7 billion were issued in 2014 (Capmarcon study, 2014), around 60% of which emanated from non-listed issuers. Maturities of Schuldscheindarlehen vary from approx. 2 to 10 years; the volume-weighted average maturity of Schuldscheindarlehen amounted to 5.3 years in 2012 (Koller, 2014). This means that the promissory note loan is an instrument with a long-term investment horizon, enabling the real economy to realize long-term investment projects.

Typical investor groups are institutional investors with an appropriate long-term investment horizon, such as insurance companies, pension funds and staff pension schemes, asset managers, savings banks, cooperative banks, as well as national and international commercial banks.

In the last few years, an increasing internationalisation of investors and issuers on the market for Schuldscheindarlehen took place. Thus, just under 30% of all issues were placed with foreign investors in 2012 (Koller, 2014). The fact that the Schuldscheindarlehen contract is based on German law (German Civil Code) and is documented accordingly is no marketing barrier – in fact, the contrary applies: German law, in particular, allows investors and issuers alike a very cost-efficient documentation and settlement of their transactions.

Why a given member state has yet to see the emergence of a private placement market is something that should, however, be closely examined on a case-by-case basis: reasons may be a lack of investors, the availability of alternative sources of funding or little interest by borrowers. The absence of a European standard is not the reason and drafting one will, on its own, not create markets. In addition, private placements presuppose a certain minimum placement size that may admittedly be adjusted downwards in line with market maturity. But they are certainly no substitute for small-sized bank loans.

The documentation standard developed as an industry initiative and referred to on page 11 of the Green Paper has only been available since the beginning of 2015. It has been used in only very few issuances to date and is extremely extensive (from around 100 pages). This makes placements more expensive and the documentation fails to provide

legal certainty – an issue which is highly important to investors. We would therefore urge the Commission to refrain from giving this market standard preferential treatment or promoting EU-wide standardisation. Increasing transaction costs by introducing additional transparency requirements, for example, or by extending the scope of the reference documentation would merely make it more difficult for SMEs, in particular, to access this funding tool. The market shows high demand for lean documentation, which should continue to be permitted in the future. We believe this point needs to be taken into account and that careful consideration is required before imposing regulatory reform on a segment which already functions efficiently, especially in the area of SME funding.

**5. What further measures could help to increase access to funding and channelling of funds to those who need them?**

GBIC is of the opinion that the problem of slow supply of financing options currently present in some parts of the EU goes back primarily to the current high economic uncertainty and the limited capacity of the banking systems in some EU member states, as well as to the current extraordinary interest rate environment resulting from the ECB's extremely expansive monetary policy. In order for the Capital Markets Union to be fully effective, the macro-economic conditions need to improve and the liquidity flood has to be stopped.

To restore the willingness of investors/companies to enter into investments, it seems crucially important that the EU as well as the individual member states make further progress in solving their central economic policy issues (labour market policy, education policy, etc.) as well as other structural problems. Private investors also depend on a performing public-sector infrastructure. In this context, it is important to further reduce the public-sector investment gap by implementing the European investment initiative (the 'Juncker Plan') initiated by the EU Commission as well as other public-sector promotional programmes.

In addition, the cost-effective and smooth financing of investments heavily depends on a reliable and stable legal framework. In this regard, we refer to our explanations in response to question no. 1: the partly limited capacity of the banking systems is also a result of the currently high regulatory implementation pressure and the resulting poorer economic conditions for corporate financing by banks and savings banks. The measures explained in the answer to question no. 1 would significantly improve credit financings preferred by many companies, and contribute considerably to the improvement of the financing conditions for small and medium-sized enterprises.

We would also express our doubts towards decision-makers that the improvement of access conditions alone would be sufficient to lift the barriers for capital market financings. With the "Neuer Markt" stock exchange segment, Germany already made its experience with a specific platform dedicated to start-up companies from so-called future industries. History has shown that it is not sufficient to merely facilitate market access. All measures should be aimed at maintaining existing quality standards. From our perspective, that is the only way to provide investors with the level of confidence required for investment decisions.

However, the balanced creation of a facilitated market access for SMEs (e.g. less restrictive disclosure requirements) may be considered a sensible, supportive measure to enable corporate financing for SMEs via the capital market on a less elaborate and more cost-effective basis. Nevertheless, related provisions should be developed under the principle of equal treatment of all issuers.

With a view to creating synergies between bank financing and financing via the capital market, securitisations may be considered crucial in establishing the necessary link: banking expertise is required to originate and service receivables, and mobilize capital markets for financing them.

Furthermore, European securitisations have shown a predominantly good performance in the past. For this reason, we welcome the considerations made regarding the creation of an EU framework for simple, transparent and standardised securitisation, which potentially contributes to the promotion of SMEs. From our perspective, criteria should be developed to allow the inclusion of ABCP and synthetic securitisations.

Based on our experience, synthetic securitisation is an important instrument of the financial sector to transfer risk, and thus to generate capacity for additional corporate lending. Hence, synthetic securitisation also plays an important role in the financing of the real economy. Using ABCP, companies are able to tap additional sources of financing by selling receivables.

In any case, criteria for high-quality-securitisations currently discussed at a European and international level (refer to the different catalogues of criteria developed by EBA, BCBS, IOSCO) must not lead to regulation inconsistencies, or distort competition. The Commission should take these considerations into account – as far as possible – in the consultations taking place in parallel to the Green Paper.

**6. Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?**

Liquidity in bond markets is created mainly by large-volume bond issues that are usually issued by large companies. These issues allow institutional investment; in the case of smaller-sized issues, the amount of research needed is usually too great. What is more, obtaining professional support (big, strong issuing agents, market making, professional communication) for smaller-sized issues imposes a virtually unfeasible administrative burden. This deters institutional investors as well. Standardisation is of no help here.

**7. Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?**

The Directive on disclosure of "Non-Financials" (EU 2014/95) has already been adopted and will establish mandatory reporting for ecological, social and *Governance* (policies,

guidelines, the codes, etc.) indicators for companies (from 500 employees, public interest entities) after transposition into national law (January 2017). Hence, ESG indicators and other controversial aspects of business (issues of human rights, anti-corruption and bribery issues, and diversity in their board of directors, etc.) will have to be communicated on a transparent basis, and be already accessible to all stakeholders.

SRI investors and particularly SRI rating agencies which need the ESG indicators within the scope of assessments, obtain sufficient information from today's perspective. The implementation of the new Directive will allow a further standardisation and thus more efficient SRI assessments, making other regulatory measures in this area redundant. The SRI market is already growing exponentially (growth of 61% in 2012-2014, GSIA 2014) – without regulatory requirements. Considering an intrinsically motivated responsibility culture on the capital market, such market movements in particular should not be burdened with additional regulatory requirements, which tend to lead to a box-ticking-mentality and are in the way of a fundamental consideration of the issue of responsibility.

**8. Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?**

In order to provide a proper structure for the European single market, capital market-oriented companies have been required to apply international financial reporting standards (IFRSs) to their consolidated financial statements since 2005; this move already established comparability of financial statements.

GBIC is of the opinion that a further harmonisation of accounting and financial reporting processes for small and medium-sized companies in Europe currently does not appear appropriate, since the entire governance and regulation structure within the European Union is not harmonised. For instance, there is no uniform regulation amongst the EU member states regarding the following issues: taxation, remuneration of managers, appropriation of profits, capital conservation and covenants of loan agreements. Since these issues are at the core of financial reporting processes of small and medium-sized companies, financial reporting in Europe is still very heterogeneous. Moreover, major problems arise with regard to the legal forms of companies, which are not harmonised either. This also brings up the issue of equity accounting. As long as legal and commercial frameworks in Europe differ to such an extent, smaller and medium-sized companies need to be able to adapt their accounting and financial reporting processes to the country-specific governance structure; otherwise, economically dangerous friction could be the result. Hence, the harmonisation of accounting and financial reporting standards can only be at the end of a harmonisation process - not at the beginning. The application of uniform IFRS accounting standards to small and medium-sized companies is currently not desirable from our view. We also refuse the development of a dedicated / new EU accounting standard for SME growth markets.

**9. Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?**

We appreciate considerations regarding the strengthening of crowdfunding platforms from a macroeconomic angle, and more specifically, from a growth policy aspect. From the perspective of potential company founders, the access to financing – especially in the early stage of the company – represents a major challenge. Despite all the euphoria, it should be mentioned that many aspects of crowdfunding regarding functioning, opportunities and risks, but also control or regulation, has not (yet) been assessed properly due to a lack of experience, statistics and historical data.

From an investor perspective, crowdfunding is a high-risk investment where total loss of the funds invested is possible. Referring to the risk level, it is irrelevant whether the investment is considered a credit or equity product. For this reason, GBIC is of the opinion that investors need to be properly informed about such risks.

In view of the complexity of crowdfunding investments and the common practice, it is questionable if crowd investors are always fully aware of (and able to bear) the risks involved with their investments, based on business valuation and other communicated information. Asymmetry of information compared to the crowdfunding initiator (and potential fraud) make it difficult for investors to carry out proper risk assessments of the project to be financed. Moreover, the operators of crowdfunding platforms do not assume any liability for the accuracy of the information provided on the financing projects. In order to provide retail clients with a simple and possibly reliable assessment of the risks involved, the platform operator needs to publish the analysis of the existing risk assessment for each financing project in a transparent manner. In the interests of investor protection, the comparability of safeguarding measures with other asset classes must be given for investors. Therefore, we recommend that the platform provider – depending on certain thresholds – provides a short product information leaflet, and a prospectus for larger amounts.

In addition, the impression that investments in crowdfunding projects are comparable with the safety of bank deposits must be avoided. Particularly in view of the current low interest rate environment, which bears the threat of misallocations and dangerous bubbles, it is important not to place the promotion of crowdfunding over investor protection. This means that existing circumvention structures and regulatory gaps must be remedied. Moreover, it is necessary to establish relatively tight thresholds for individual investments for an exemption from the prospectus requirement. This is to protect retail clients and the interests of capital-seeking, 'start-up' company founders alike. However, we reject a uniform regulation of crowdfunding in Europe: from the perspective of the GBIC, it bears the risk that it does not reflect different needs throughout Europe, and might slow down economic development.

**10. What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?**

The promotion of cross-border and long-term capital movements requires a stable business environment from an investor's perspective. Long-term subsidy programmes, particularly for initial funding, are as important as regulatory initiatives.

It should also be taken into account that – in particular – the asset classes mentioned above require specialised (risk management) expertise and cannot be standardised; instead they require project-based assessments and advice – for this reason, standardised risk/scoring tools do not apply (see also question no. 2). This requires different business models, which should be promoted in Europe, taking competition issues into account. Individual groups of investors should therefore not be granted advantages regarding investment conditions. To the extent that institutional investors are considered as financing providers, regulation needs to ensure a level playing field to safeguard this alternative financing system. Less strictly regulated or unregulated investors [direct lending through (alternative) credit funds, platforms, etc.] are to be considered accordingly.

However, and in particular, investments in smaller companies are hardly attractive for large institutional investors, due to the necessary research efforts. Equity and debt capital investments in SMEs and start-ups are based on a close relationship and monitoring of the respective company. This is typically only provided either by banks (debt capital), or by venture capital funds or business angels (equity).

In addition, we would like to point out that the long-term financing of industry, infrastructure and real estate projects, as well as the financing of aircraft, ships and other assets is jeopardised by the review of capital requirements for securitisations as adopted by the Basel Committee on Banking Supervision in December 2014. If isolated assessments are carried out, the above-mentioned projects or assets are often based on funding structures fulfilling the securitisation requirements set out in the respective definition of Art. 4 (61) of the CRR. This is the case if the refinancing is structured in several tranches, which are subordinated one to another. If, in the event of a borrower's default, the subordinated creditor has no chance to assert his claims (so-called "non-cross default"), he would have to carry the losses incurred.

In contrast to "real" securitisations, no exposure transfer takes place with these "specialised lendings". However, this is a prerequisite for a transaction to be allocated to one of two types of securitisations provided in the CRR. Transfer of ownership of the securitised exposures from the originator institution to an SSPEA is part of a "traditional securitisation" (Art. 242 (10) of the CRR), so-called "true sale". "Synthetic securitisations" means a securitisation where the transfer of risk is achieved by the use of credit derivatives (Art. 242 (11) of the CRR). Neither is applicable in the case of "specialised lendings" mentioned above. Accordingly, the following statement is given in recital 50 of the CRR: "an exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a

securitisation, even if the transaction or scheme has payment obligations of different seniority".

The Basel Committee now promotes in its "Revisions to the securitisation framework", dated 11 December 2014, that securitisation only applies if losses are allocated to the subordinated tranche only (para. 2). This creates the risk that "specialised lendings" with a "non-cross-default" clause must be considered as securitisations. In addition, "specialised lendings" would hardly qualify as "simple, transparent and standardised securitisations" due to their specific characteristics (e.g. no "true sale", low granularity), for which lower capital requirements might apply under certain circumstances. Thus, there is a risk that the capital requirements for these transactions would rise considerably, with negative repercussions on the overall volume – or the conditions –of long-term loans used for the financing of the above-mentioned projects. This would be in conflict with the Commission's objectives pursued with the creation of the Capital Markets Union. Therefore, one focal point in the implementation of the new Basel rules – which are to come into effect no earlier than 2018 – should be to ensure that "specialised lendings" are not treated pursuant to securitisation regulations.

**11. What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?**

The charges raised by national supervisory authorities (NSAs) for listing and/or passporting investment funds such as UCITS, ongoing costs for periodical reporting to the regulator as applicable and the costs for amending of the legal documents could be decreased. The obligations for publication of legal documents should be reduced. Furthermore cross-border marketing would be easier if the home country NSA of an UCITS would be responsible for all cross-border distribution matters. The standard of the passporting process could be a good example for this simplification.

**12. Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRD IV/CRR and Solvency II?**

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**13. Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?**

We welcome the emphasis given in the Green Paper to capital-based schemes for pension provisions. Several member states support the creation of personal pension assets. These promotional programmes have usually been in place for several years – or even decades – with different characteristics regarding requirements for funding and product features. These differences are due in particular to the fact that the governmental programmes are usually linked to national economic and social policy measures, which con-

tradicts the necessity of a cross-border offer and a corresponding demand. A reorganisation would therefore mean that common procedures need to be replaced, as explained in the Green Paper. The risk is that a change of systems in this area – which is strictly regulated in Germany – jeopardises the existing capital-based schemes. In Germany, around 16 million government-supported private pension fund contracts exist and a European standardisation would create an unnecessary parallel universe, while many employees would be worried about their existing contracts. For these reasons, GBIC is against a European-wide reorganisation or standardisation of the models in place regarding capital-based private and company pension provisions. If the intentions are to harmonise the statutory or company pension provisions on EU level, EU tax and labour law would have to be harmonised as a prerequisite.

**14. Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?**

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**15. How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?**

A stronger financial promotion through EU financial instruments within the scope of EU promotional programmes seems to be appropriate here. The efficient use of subsidised funds can play a crucial part in initiating structural change and promoting growth and innovation. The established sharing of risk between public-sector and private capital sources has stabilising effects in times of crisis.

The first incorporations of public-sector promotional banks outside of Germany in 2014 are proof that these institutions have now been recognised as important players on capital markets in the current economic and political context.

In addition, more incentives could be used to mobilise more capital held by high net worth individuals and companies. Appropriate tax rules in member states should make investment in venture capital funds more attractive.

For venture capital investors, it is important that they can sell (exit) their investments later. Suitable exit opportunities on stock markets may be helpful, provided the general conditions for investors and issuers are right. Often appropriate stock market segments already exist.

**16. Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?**

Regarding current banking regulation (Basel III, or the European implementation through CRD IV/CRR), it must be ensured that the existing advantages – in particular, the eligibility of loans extended to SMEs – remain unchanged and that no new regulation is introduced leading to disadvantages for the financing of such companies:

- Long-term maintenance of the SME scaling factor in accordance with Art. 501 of the CRR

  Referring to the empirical analysis, we demand to maintain the capital requirements for counterparty credit risk for SME loans. In order to keep the effective capital adequacy for SME loans (i.e. corporate lending in retail business) at the current level (6%), the CRR provides for a scaling factor of 0.7619. This scaling factor for SME loans should be maintained for the long run.

- Fundamental review of Net Stable Funding Ratio

  The Net Stable Funding Ratio included in the Basel Committee's proposals provides that directly extended, long-term loans have to fulfil higher refinancing requirements on the equity and liabilities side than receivables from bonds and short-term loans. This will be detrimental to corporate financing with long-term maturities or long-term fixed interest rates, particularly regarding debt funding of SMEs. Referring to Article 510 of the CRR, the mandatory introduction of a long-term refinancing indicator should be assessed very critically.

- Practical rules for the consideration of loans secured by property

  The consideration of property as collateral plays a key role for the scopes acceptable within granting processes of SME loans. Depending on the approach applied by the respective institution, the handling of such loans is governed by Article 124 or Article 199 of the CRR, respectively. Under the Credit Risk Standard Approach (CRSA) pursuant to Article 124 (2) of the CRR, the risk-weighting for exposures secured by liens/mortgages on residential property is 35% and the risk weighting for exposures secured on commercial property is 50%. Under the Internal Ratings-Based Approach (IRBA), property is recognised as loan collateral. In essence, the privileges provided for in both approaches lead to comparable capital requirements. These optional privileges considerably increase the credit availability for SMEs, both from the perspective of regulatory capital requirements and from the operating risk perspective of the bank. They must therefore remain in place. Should property no longer (and sufficiently) be recognised as collateral for regulatory purposes, a significant drop of SME loan availability would be the result.

- Negative impacts on the long-term extension of loans due to the currently-discussed impairment model of IFRS 9 (expected loss, impairment) have to be examined, and should be avoided in the implementation.

- Exemption of subsidised lending from inclusion into the leverage ratio

  The inclusion of subsidised loans (*Förderkredite* by promotional banks) in the calculation basis of the leverage ratio leads to a higher demand of capital on the side of public-sector development banks and banks intermediating such loans. Credit institutions would be forced to limit their subsidised lending activities as a consequence of the imminent multiple charges on subsidised loans. Hence, access to different

forms of funding would not be simplified – instead, it would become more complicated, contradicting the original objective.

Regarding the extension of loans by non-banks, which are regulated less strictly than banks, it should be taken into account that this may be the source of new risks.

17. **How can cross border retail participation in UCITS be increased?**

According to the ESMA proposals, product governance requirements imposed on manufacturers and distributors of investment products shall not only apply to active distribution periods in the scope of initial placements and to advisory services, but explicitly to all secondary market activities – including execution-only transactions. This would incur significant bureaucratic costs for simple order execution on the market. The currently low transaction costs would increase, potentially attracting fewer retail clients to the capital markets. A regular reporting of every individual distributing institution to potentially all issuers on the markets during the entire term of the instruments would require the creation of a (currently non-existent) infrastructure, with countless bilateral relations between issuers and distributing institutions.

We fear that such a regulation could hamper access to security investments, either by cost increases or a general limitation of the offered products. This additional bureaucratic burden without any clear protection effects contradicts the promotion of cross-border capital flows, which are one of the focal points of the Capital Markets Union intended by the Commission.

**18. How can the ESAs further contribute to ensuring consumer and investor protection?**

According to our assessment, the role of ESAs in the context of consumer protection is generally limited to the monitoring of, and ensuring compliance with legal requirements (cf. Article 9 of the respective ESA-Regulation). This market-observing role should not be changed. Existing consumer protection requirements are already detailed enough, on both a national and European level: in our view, therefore, there is no need for any further standards defined by ESAs. In fact, any additional requirements imposed by the ESAs would give rise to differentiation issues, and would contradict the principle of a separation of powers.

Furthermore, the activities and duties of the existing European regulatory authorities should be reviewed as part of the Capital Markets Union. We believe the level of cooperation and coordination amongst these authorities still leaves room for improvement. Regulatory authorities should consider interdependencies with (and impacts on) other regulatory areas at an early stage, and be in continuous dialogue with other standard setters (such as the IASB).

In addition, all measures taken by ESAs should be subject to consultation on a mandatory basis, including those with no direct binding effects (e.g. guidelines, recommendations and comments), since these measures tend to have binding character for market participants. The publication of FAQ by regulatory authorities without prior consultation

leads to the loss of regulatory methodology and random results in the medium- to long-term. Thus, FAQ do not create more, but less legal certainty in the end.

The goal should be to avoid legal uncertainty for market participants with regard to the interpretation of standards. Subsequent adjustments by ESAs incur significant adjustment costs.

Finally, ESAs need to pay more attention regarding the overall impact and interaction of measures below level 1-regulation. Institutions are, for example, withdrawing particularly from investment business and offering their customers fewer products and services. Market access and offerings for retail clients in particular are becoming seriously restricted. Implementation of MiFID II will in all probability reinforce this trend.

ESAs should also make sure that its measures remain within the limitations of level-1 regulations, in order to comply with the political determination of the European Parliament, Council and Commission.

**19. What policy measures might increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?**

Securities are a fundamental element in the process of a well-balanced asset building process, and are indispensable in the wake of the low interest rate environment (also for pension provisions). Appropriate financial advice is of great importance to retail clients when accessing the capital markets. Retail clients often only learn about the important role of capital market products from their banks.

In the securities business, banks and savings banks are subject to a plethora of regulations, all of which serve the purpose of investor or consumer protection. However, these regulations have brought about numerous unintended negative side effects, which ultimately keep retail investors – who are important providers of capital – away from the capital markets:

The ongoing 'regulatory hurricane' is increasingly withdrawing banks and savings banks from offering investment advice – to the detriment of investors who invest in securities-based products on a less informed basis, or refrain from such investments altogether. This effect contradicts the policy objective of establishing equities (and securities in general) as a fixed component of long-term asset building. In essence, this also obstructs one of the objectives of Capital Markets Union: to create more effective and more efficient capital markets.

Effective investor protection is thrown into reverse through an abundance of information. Excessive formal requirements do not render investment more attractive: they reinforce the withdrawal of banks and savings banks from their role as intermediaries.

For institutions, uncoordinated multiple regulation significantly increases costs and liability risks. This effect is particularly burdensome for smaller institutions which cannot afford the related higher costs on an ongoing basis.

European regulations do not always sufficiently account for national specifics. For instance, on Level 2 ESMA intends to tighten the requirements for quality improvement of inducements to an extent that would result in a *de facto* inducement ban. This would have an extremely adverse effect, especially upon retail clients. In Germany, inducements are permitted which are designed to maintain the provision of investment advice ("infrastructure measures"). This is the key for the extensive, high-quality investment advice available on the German market, with 155,000 investment advisors in Germany and a very low level of complaints. A *de facto* inducement ban would severely restrict the advice offered, especially in rural areas and for clients with a lower income, who particularly depend upon such support for their financial planning and retirement provisions. (In the UK, for example, the number of bank advisors has dropped by 60% since the inducement ban was imposed.)

Against this background, GBIC demands the following:

- Regulation must be kept in perspective: it needs to be oriented upon actual market circumstances, and must create sensible improvements for consumers. In its current form, regulation often 'puts the brakes' on the securities business – without any discernible added value for clients.

- Impact assessments at a European level, to analyse the consequences and national impact of individual regulatory initiatives:

  The regulations' impact on capital market access for investors, and the actual benefits for clients must be taken into account (for example, the consequences of a *de facto* inducement ban through ESMA's Level 2 measures for national markets and clients). National specificities – such as a functioning advisory market – must be reflected to a higher extent; the impact of regulations at a national level needs to be analysed (in more detail) in advance.
- Regulatory proposals and initiatives must be harmonised to a greater extent (regulatory consistency): for instance, refer to the differing, inconsistent cost transparency requirements set out in MiFID II, UCITS and PRIIPs regulations). It is therefore of great importance to ensure in the drafting of the legal acts implementing MiFID II that the unbureaucratic offering of investment advice to retail clients continues to be feasible for banks.

Moreover, GBIC believes that the following specific measures may help improve capital market access for retail investors:

- MiFID II will implement a "suitability report" on a European level. Clients should be given the possibility to 'opt-out', possibly subject to certain conditions such as the investor's 'financial markets qualifications'. Such an opt-out mechanism – without restrictions – already exists in insurance law. The option to dispense with the documentation of an advisory discussion is in line with the wishes of many bank clients. Experienced investors in particular keep complaining that the concept of 'empowered citizens' is being dispensed with: they criticise the missing opt-out mechanism as a 'forced blessing' which unnecessarily complicates quick trading (holding the threat of price slippage).

- MiFID II imposes a duty to record securities orders placed by phone. In essence, this means that in future, this recording requirement would not only cover the order placed, but also the advice given. The fact that the "suitability report" must be prepared in parallel holds the threat of duplicate documentation – this must be avoided in any case.

- Furthermore, ESMA's excessive Level 2 requirements concerning the permissibility of inducement-based investment advice question the decision of European legislators to maintain a choice between inducement-based investment and fee-based investment advice. A clarification is required on Level 2 that facilitating access to investment advice through inducements qualifies as quality-enhancing.

- Basic financial knowledge is another important aspect with regard to the promotion of the European retail segment of the capital market: responsible capital investment decisions require the necessary knowledge about economic relationships. Education initiatives aimed at increasing the population's financial market knowledge play a key role in the support of private asset building and adequate pension benefits.

**20. Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?**

GBIC refuses binding requirements regarding simple and standardised financial products. A link between complexity and risk of financial instruments does not necessarily exist; the product design should be left to the market. This also applies to investment funds: UCITS – highly-regulated and therefore clear and transparent financial instruments – were introduced at a European level and are suitable for almost all investor groups.

**21. Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?**

Generally speaking, regulatory measures should be examined to assess whether they lead to regulatory arbitrage or distortions of competition. Specific initiatives that are currently being debated and should be examined more closely in this respect are the reforms to the structure of the EU banking sector and the financial transaction tax.

In general, the successful implementation of the EU product and asset manager passport (as part of the UCITS IV Directive) could be used as a positive example. These passports are also a sign of international competitiveness and the attractiveness of the European investment location.

At the same time, a certain level of 'home bias' can be considered quite rational from a risk assessment perspective, especially with regard to SMEs and to promote regional structures and economic regions: such a home bias need not necessarily trigger intervention. When measuring the market results, it is difficult to judge whether artificial or natural factors have led to an emerging – and seemingly persistent – structure in a

given country. A stronger integration in terms of results of financing flows should therefore not be taken as an objective in itself. Instead, individual assumed or actual hurdles should be taken as a basis for argumentation alone.

**22. What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?**

Any existing (political, legal, or regulatory) barriers should be avoided or eliminated. Such issues can be addressed at an international level, for example, via the WTO or multi- or bilateral agreements. However, natural factors may also cause geographical segmentation of an otherwise free single market. The list of natural factors includes language barriers, or the possibility to carry out a facilitated (risk) monitoring for local investments.

**23. Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?**

The expansion of the "systematic internalisers" (MiFIR) regulation to the non-equity area gives rise to expectations of negative impacts on the liquidity, and thus the viability of the markets based on ESMA's consultation documents.

The thresholds proposed by ESMA for the definition of systematic internalisers in bonds leads to the classification of virtually all (German) credit institutions as systematic internalisers, due to the very low threshold values. The existing practice of fixed-price transactions/security offers in Germany leads to a quick fulfilment of these criteria. Such a result does not appropriately reflect the principle of proportionality. Due to the lack of experience of all parties involved regarding the definition of systematic internalisers in the non-equity area, higher thresholds should be set initially. In order to avoid the creation of a rather costly system for the continuous monitoring of (relative) thresholds for small and medium-sized credit institutions, the establishment of a *de minimis* regulation for absolute thresholds should be considered.

The question as to whether the new MiFIR rules will lead to more transparency depends in particular on the appropriate classification of bonds into liquid and non-liquid titles. If non-liquid bonds were erroneously classified as "liquid" bonds, they would represent unbearable risks for systematic internalisers, which could not be hedged. As a result, the willingness to provide prices for such bonds at all would significantly decline: this would be the direct opposite of what should be achieved by higher price transparency.

Thus, it will be decisive to shape the details of Art. 9 (5) of the MiFIR in such a way that bonds are classified appropriately. The approach provided by ESMA in consultative document 2014/1570 (page 103) does not support this objective. The calculations for corporate bonds conducted by ESMA clearly show that the parameters and thresholds chosen do not deliver acceptable results: a hit rate for correctly classified "liquid" corporate bonds (Non-Financials) of 48.62% ("senior corporate bonds") and 42.86% ("subordinated corporate bonds") is not acceptable. This translates, in turn, to the fact that 51.38% and 57.14% of corporate bonds are classified as "liquid", even though they are

not ("false positive"). We believe it is necessary to calibrate the parameters used as a basis for the classification in such a way that a hit rate of at least 95% is achieved.

This applies all the more given the fact that experience made on the equity market (exchanges, MTFs) cannot be applied to the non-equity market without differentiation: while usually one share per company is traded on the market, a company may issue numerous bonds, leading to a more pronounced dispersion of trading activity on the non-equity market. Moreover, standardisation of asset classes is also not comparable to the equity segment. Thus, pricing and market making are subject to other dynamic effects – liquidity cannot be created at the touch of a button.

Market making has an important role in ensuring tradeability of securities. New regulations contradicting the ensuring of liquidity through market making should therefore be avoided.

One challenge for regulatory measures will be to introduce standards and to improve transparency, without threatening the liquidity and efficiency of the European capital market or introducing distortions in global competition.

Market liquidity is generated and secured by repurchase agreements (repos). However, some repos require central counterparties (CCPs). Repo markets are sources of funding without which many markets (including sovereign bonds issued by large EU member states) would lose their liquidity. Yet the repo markets are being constantly restricted by regulators – for instance, by the projected introduction of the financial transaction tax or the net stable funding ratio (NSFR), the planned regulation on securities financing transactions (SFTR), or the leverage ratio in its current EU version.

**24. In your view, are there areas where the single rulebook remains insufficiently developed?**

We recommend a review of the existing regulation of the capital market as part of the introduction of future rules and regulations. The objective should be a set of regulations "all of a piece", which avoids double regulation and inconsistencies (to the extent possible), and takes into account the cross-dependencies of financial market regulation. Regarding regulation, it remains highly important to strike the right balance between stability, investor protection, and performance of the financial markets.

One example of an area where the single rulebook has yet to become a reality is the disclosure regime for issuers who wish to tap the capital markets. The requirements which currently apply at European level are not adequately coordinated with one another. As a result, they impose an excessive burden on issuers while offering investors little added value. Take, for instance, the various disclosure requirements under the First Company Law Directive (68/151/EEC, now 2009/101/EU), the Prospectus Directive (2003/71/EU), the Transparency Directive (2001/34/EU), the Market Abuse Regulation (96/2014) and the PRIIPs Regulation (1286/2014). Harmonisation across these directives and regulations is long overdue so that duplication and overlaps can be eliminated and an appropriate level of investor protection can be established. Further details are set out in our comments on the revision of the Prospectus Directive.

Another objective should be to identify and reduce excessive formalism in the interests of investor protection. As important as investor protection is, excessive formalism will potentially discourage investors and encourage banks and savings banks to withdraw from their role as mediators due to cost and liability risks. Today, excessive regulation is already leading to the withdrawal of retail clients from capital market investments. As a consequence, many retail investors refrain from using the support provided by investment advice, and thus potentially miss important opportunities on the capital market (also refer to our response to question 19).

GBIC therefore supports the European initiative to strengthen the "shareholder / equity culture". Specifically, this includes the adequate harmonisation of the cross-border exercise of shareholder rights and of investor protection, as well as easier advisory services for investment in shares. Regulations must also take into account that the attractiveness of investments in equity largely depends on their accessibility for large parts of the population.

Scopes and options provided to eliminate inappropriate efforts should be used in the implementation process of EU Directives, while "gold-plating" should be avoided. Also, isolated national regulations need to be abandoned going forward, given the objectives of the Capital Markets Union.

In addition, key regulation should be set at Level 1, not at Level 2 (e.g. ban on conclusion of TTCAs with retail clients in MiFID II, but planned transfer of this legal concept to professional clients at Level 2, although the Financial Collateral Directive is designed to facilitate the use of these instruments precisely with such clients).

**25. Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?**

**Powers:**
Yes, we believe the powers regarding banks/investment firms to be sufficient. The powers of regulatory authorities should be extended to non-banks and other players providing financial services on the so-called grey capital market, including the corresponding products, within the scope of the Capital Markets Union.

**Additional measures:**
The Capital Markets Union should also be used to examine and improve cooperation between European supervisory authorities. Regulatory authorities should consider interdependencies with (and impacts upon) other regulatory areas at an early stage, and be in continuous dialogue with other standard setters in order to avoid different regulations for comparable issues.

The various regulatory requirements currently in place for comparable issues need to be harmonised. The enormous costs caused by the increasing number of regulatory measures and the existing heterogeneous regulatory environment have to be considered as well. They weaken the ability of financial institutions to strengthen the capital

base in order to survive in the long run, and to provide financial services for the economy.

The upcoming review of the European regulatory system should establish a practicable (judicial) control of the decisions and measures carried out by ESA.

Within this context, the following measures could be useful:

Prior to the publication of a consultative paper, industry experts and representatives from associations should be invited to discuss relevant issues with the regulatory authorities. Working drafts of consultative papers should be provided confidentially to these experts and representatives prior to their publication. In order to communicate important decisions to be made to the market, it is not enough to invite only a limited circle of stakeholder representatives to the corresponding discussions. The inclusion of associations offers a broad basis for consultations, whilst confidentiality is respected, where required.

The final (and usually published) draft of the new regulation should be made subject to written consultation. An appropriate timeframe to submit comments shall be provided as part of the consultation process. This is the only way to provide the time necessary to the parties involved for analysis and comprehensive assessment of the published draft document. After the written consultation, the opportunity for verbal exchange of ideas shall be provided, depending on the issue at question and the comments submitted. Before a standard is made legally binding, an impact analysis should be carried out, depending on the issue discussed and the potential consequences.

Any comments or remarks submitted, the exchange of ideas as well as the results of the impact analysis where applicable, should be assessed comprehensively and taken into account in the publication of the final standards. Prior to the publication of actual standards, a final review of the terminology and assessment of the interdependencies with other areas of regulation need to be conducted.

The finalised standards should be transposed into legally binding law without delay, in order to provide to the institutions the necessary planning reliability (e.g. transposition of IFRS 9 into EU law). Sufficient transitional periods are required between the publication of final standards and first-time application.

**26. Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?**

This question comes as a surprise, given the European Commission's efforts over the years to harmonise securities law legislation. These efforts have not identified any approach that could serve as the basis for targeted changes to securities ownership rules.

However, it would be useful to provide to the member states the legal basis for implementation of the 2005 Geneva Securities Convention principles. This would allow a certain degree of harmonisation – particularly with a view to securities investor rights. This

approach benefits from a harmonisation based on an international concept. Nevertheless, this also implies that every single member state would have to reform its national law. The European Union would have to establish the legal basis for such reviews. In particular, it would have to be examined whether the European Union needs to ratify the Geneva Securities Convention. In addition, we would welcome the harmonisation of conflict rules in the securities law.

**27. What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?**

Despite the Financial Collateral Directive and the Finality Directive – both of which include rules governing the protection and/or recognition of close-out netting, the legal framework for close-out netting still diverges across the various member states. Business within Europe is still hampered by significant legal uncertainty. A more extensive harmonisation of the legal framework, supporting the effectiveness and enforceability of netting agreements (especially in the form of contractual netting agreements contained in master agreements or in the rules and regulations of central counterparties), would be an important step to strengthen netting agreements as a key tool for mitigating risks in financial transactions. This applies all the more since recent regulatory initiatives (CRR, EMIR, BRRD, SFT) implicitly presuppose a robust, uniform EU-wide legal framework for handling financial collateral (particularly in connection with cleared and non-cleared OTC derivatives) and close-out netting (segregation of client collateral, effectiveness of close-out netting as the basis for calculating the regulatory collateral, etc.).

When continuing to develop the legal framework for close-out netting, the UNIDROIT netting principles recently adopted (in coordination with the European Commission) should be taken into account.

**28. What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?**

European company law contains two corporate forms allowing simplified cross-border activities, including the transfer of the company's domicile: the Societas Europaea (SE) and the European private limited liability company. Therefore, we believe that no further measures at EU level are required. To the extent that companies choose a national corporate form, the corresponding national requirements are to be taken into consideration. However, this is unproblematic due to the fact that appropriate corporate forms are available for companies active primarily in cross-border segments. Existing European corporate governance regulations were covered as part of the recent consultations carried out in the wake of the financial markets crisis, and included in the Green Paper.

In any future regulatory initiatives, the European Commission should consider – to a stronger extent than before – the following issues: different systems within the EU regarding shareholder participation and protection of minority shareholders, as well as differences between the existing monistic and a dualistic corporate management structures. This was omitted, for example, in the proposal for a Directive amending Directive

2007/36/EC concerning support for the long-term involvement of shareholders, and of Directive 2013/34/EU (Shareholder Rights Directive). Based on current discussions, the proposed rules for the monitoring of related-party transactions will not be compatible with German corporate law, since the shift in authority to the General Meeting for matters of company management would represent an inappropriate intervention in the distribution of authority amongst the executive bodies of a public limited company. This would make it difficult for the management board, entrusted with managing the company, to act in a swift and appropriate manner, especially in a crisis. Proposals should also be subject to consistently applied cost-benefit analysis.

When further developing European company law with regard to cross-border mobility and restructuring, it should be borne in mind that companies encounter legal obstacles or impediments in their EU-wide activities that are not rooted primarily in company law. For example, neither the supranational legal entity of the European Company (SE) nor cross-border activities in general are accompanied by a tax regime that governs priority issues, i.e. the tax treatment of corporate relocation across borders and the recognition of losses on foreign direct investment at national level, in a tax-neutral manner.

**29. What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?**

In our view, a harmonisation of the substantive insolvency law would not provide a considerable contribution to the emergence of a pan-European capital market. Whilst it is correct that the so-called issuer risk must also be taken into account when making an investment decision, this assessment is primarily based upon the issuer's solvency, with the applicable insolvency law being considered as a secondary aspect, if at all.

We welcome the harmonisation of conflict rules and the mutual recognition of insolvency proceedings (EU Regulation on insolvency proceedings).

**30. What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?**

A comprehensive harmonisation of tax regulations shall not be targeted, given the fact that the European Union has no mandate for direct tax regulations. However, individual tax obstacles in conflict with the Capital Markets Union may be addressed and lifted.

From our view, the proposed introduction of a common financial transaction tax is such an obstacle. It is currently discussed by eleven member states of the European Union in accordance with their proposal dated 14 February 2013. Following the current proposal, trading in securities and derivatives shall be subject to taxation on the broadest basis possible. The taxation of securities trading will increase corporate costs for raising capital. Moreover, the financial transaction tax would have negative effects on retirement provisions of small savers (in Germany: e.g. Riester pensions), making them more expensive.

Even though primary transactions, such as first-time issues of shares, are excluded from the tax, trading on the secondary market is planned to be made subject to taxation, so that tax will ultimately be borne by securities buyers. This would have a detrimental effect on the development of a culture in securities trading.

According to various calculations, the financial transaction tax is intended to provide several billion euros to public households every year. This means that less capital would be available for companies seeking funds on the capital market. The financial transaction tax planned by 11 members states is thus contradicting the Capital Markets Union. The plans to introduce a financial transaction tax should therefore be rejected.

Similarly, financial transaction taxes introduced at national level in some member states should be abandoned for the benefit of a functioning capital market. Such taxation has caused a considerable decline in trading activities in these countries.

However, uniform tax regulations for cross-border investments are of particular importance not only for banks. Banks are regularly involved in the settlement of tax issues on behalf of their clients in their capacity as financial intermediaries. In this context, further progress in the simplification of cross-border withholding tax reductions as part of double-taxation agreements would be a useful contribution to a stronger integration of EU capital markets.

From an investor's perspective, the reimbursement of withholding tax payable in some member states on interest and dividend payments need to be simplified and accelerated.

In the case of an investment in accumulating foreign investment funds, it has to be made sure that practicable and fair requirements apply to the proof of income in the country of taxation.

An analysis should be carried out on the equal tax treatment of equity and debt financing in the EU member states. Incentives should be provided for member states to create a level playing field.

The current OECD considerations on "Base Erosion and Profit Shifting" (BEPS) – supported by the EU – will possibly lead to increased control and reporting requirements for foreign investments, given the regulator's objective to eliminate the possibility that taxpayers could benefit from different tax regimes. The principle of proportionality should be respected in this context, and cross-border issues should not be burdened by additional bureaucratic requirements and therefore be made less attractive to potential investors.

**31. How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?**

The best support possible is non-interference and openness regarding a wide variety of solutions. Regarding new technologies, government institutions usually do not know in

advance what will turn out to be the most successful or the most efficient solution. Hence, no specific solutions should be favoured, and no privileges be granted early on. Decentralisation and diversity are the best basis for innovation.

***New technologies***
New technologies harbour chances and risks. They may contribute to more efficient capital markets. Care should be taken to ensure that new technologies are subject to the same supervision and security standards as traditional technologies.

New developments are currently taking place particularly in the FinTech sector. Some of these are being promoted by established market participants or by providers that are new to the market. Competition is creating a momentum of its own in this sector. However, fair competition presupposes the creation of a level playing field between the various providers also at international level.

***New business models***
New business models are being developed mainly by non-bank financial intermediaries or shadow banks. The European Commission should make a point of taking into account the regulatory approach adopted in this area and of addressing the issue of systemic risk.

32. **Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?**

In general, stable economic and political framework conditions lead to a strengthening of investor confidence and are therefore the basis of long-term financing with appropriate terms. In order to fully restore confidence amongst market participants, the following measures are necessary: reduction of the sovereign debt and infrastructure deficits, reduction of macroeconomic imbalances in the euro zone, strengthening of the institutional framework of the euro currency as well as developing less productive national economies (see also our response to question no. 5).

The demand side of the market is not taken into account appropriately in the discussion about the Capital Markets Union. The improvement of access to capital alone cannot be sufficient from our perspective.

In addition, we would like to dampen exaggerated expectations regarding the Capital Markets Union. Some Capital Markets Union supporters believe that it would be suited better to absorb the effects of economic fluctuations between the countries of the euro zone than a fiscal union. We do not agree with this view.

Prior to a structural change, or even the reorganisation, of the European financial markets according to the US model – which have been used as references by the EU Commission – a detailed assessment of the different national and regional conditions is required in order to turn the Capital Markets Union into a success. Capital market financing of companies and public households was never as important in Europe than in the US, from a historic perspective. This goes back to a long-standing tradition in Europe, based on cultural factors (financing of public services, credit culture, etc.) and should

not be modified artificially. In addition, the economic impacts, including potential interdependencies, of better integrated capital markets in Europe need to be thoroughly analysed, both with regard to a higher level of macroeconomic growth and in relation to more economic stability. Integrated capital markets must not be an end in itself.
With a view to the financing of SMEs, this also includes a comprehensive, empirically-based analysis of the demand from such enterprises for financing instruments offering terms close to the capital market. In this context, concrete obstacles for capital market financing need to be identified.

Until that time, it is important to further develop the stable relationships between companies and banks, or at least to prevent additional burdens (see our proposals in response to question no. 1). Stability in the business environment and long-term legal certainty are key success factors for a Capital Markets Union: constantly changing regulations are not only an impediment to an adequate risk assessment – they are a burden upon strategic (re-)orientation and upon any fundamental revision of business models for all market participants.

GBIC therefore expressly recommends to consistently regulate all market participants and apply the principle of proportionality. Regulatory requirements must not jeopardise the objective of broadening the investor basis by introducing overly bureaucratic regulations without substantially improving investor protection, as well as a more efficient bank-based financing in particular of SMEs.