Dear Ladies and Gentlemen,

**Where is the Circular to the Investment Ordinance??**

We are fully aware of the fact that our Members read the BAI Infomails carefully. However, it is rather seldom that our BAI Infomails are followed by detailed reporting in various media. The reason for this was the quite critical acclaim in BAI Infomail VIII/2017 from August 31, 2017, that the industry and investors are still waiting for BaFin’s Circular to the Investment Ordinance and that there is still no concrete information on the current state of affairs, let alone a planned publication date. As a reminder, the draft circular was consulted at the turn of the year 2016 already, and the January issue of the BAI Newsletter's editorial took up our main points of criticism and our core petita on the draft circular.

It is an interesting matter of fact, that the BAI is the only association that also speaks about it in public – most recently at a prestigious conference on investment strategies for institutional investors and at BaFin’s insurance day – and clearly states that this situation is no longer acceptable to the investors concerned and, of course, to the fund industry. BaFin and the Federal Ministry of Finance, which has meanwhile been involved in the process, are appeasing and pointing to the "special circumstances" and that there should be no further delays – also with regard to the realignment of the BMF after the election to the German Bundestag. But we have heard that so often, so I would not bet on a timely enacting. In any case, one may and must ask – also publicly – whether the BaFin and the BMF are really aware of the impact of this vacuum?

It is a fact that there is still legal uncertainty with regard to various fundamental issues, which mainly relate to investments in or via AIFs, and that consequently planned investments are postponed to the long term. As if the investors concerned do not already have enough other (investment) problems! In any case, the special topic of the treatment of unsecured bank debt instruments under the Investment Ordinance in the context of the new stipulations of the Settlement Mechanism Act (“Abwicklungsmechanismusgesetz” – AbwMechG) and the ensuing amendment of § 46 f KWG (German Banking Act) is an additional problem. The BaFin seems to be seeking a treatment as subordinated claims (§ 2 Paragraph 1 No. 9), which has, of course and rightly, caused an outcry among the investors concerned, even though existing portfolio investments of course cannot be affected by such a classification, i.e. it is primarily an issue for new investments. Even though these are different issues: but regarding government bonds the regulator avoids a clear and stringent approach; thus regarding
unsecured bank bonds the regulator should not overshoot the mark. Above all, this special topic should not delay the timely adoption of the Circular to the Investment Ordinance. In short: a little bit of fresh wind in the BMF may not do any harm with this topic.

**Do we need – already now – a reform of the European financial supervision?**

On 20 September, the European Commission presented proposals for a stronger and more integrated European financial supervision, which could have a significant impact on our member companies on the one hand, but also on relevant investors on the other hand. The so-called ESA (ESAs are the European Supervisory Authorities EBA, EIOPA and ESMA) review is part of the Banking and Capital Market Union project, and in principle the BAI also supports this sub-project, because a better integration of the European financial markets also requires a functioning European supervisory system. It is really important to identify weaknesses of the existing system and to strengthen the supervisory convergence, and above all to improve efficiency at both national and European level. Whether such fundamental and far-reaching measures are necessary to achieve this goal is still in question for us. The BAI is particularly critical of the broadening of competences at European level and the direct funding of ESAs by the financial industry.

You have learnt from our relevant press release that we definitely see a need to evaluate the work of the European financial supervisors. Six years after the establishment of the European system of financial supervisors, it makes sense to put the quality and efficiency of the work of the different authorities EBA, EIOPA and ESMA to the test. Indeed, there are deficiencies with regard to the work of the ESAs, a lack of effective cooperation among themselves and with the national supervisory authorities and, in some cases, with the Member States, and also redundant reporting obligations for investment funds that have to report both to ESMA and the ECB. It is therefore time for a critical inventory of the situation, but this should not be taken as a reason for a regulatory turn-around. In our view, direct supervision by ESMA, for example, should only be permitted in exceptional cases, and in justified cases. The principle of subsidiarity, i.e. closeness to the subject matter, must continue to apply. The supervision of funds and their management companies must continue to be carried out by the national supervisory authorities, and just because ELTIFs, EuVECs and EuSEFs are European labels, this does not mean that supervision must also be centralised at European level. For example, we would prefer to place the admission of third-country funds at European level and encourage a more rigorous approach to gold plating in individual Member States. Such a reform for the European supervisory authorities would deliver real added value.

In addition to the expansion of competences, all parties criticize the reorientation of the funding of the ESAs; the national supervisory authorities are to be replaced by industry and market participants. The partial financing from the EU budget will be retained. In this respect, it must be made quite clear that ESMA and the other ESAs have in many cases become the extended “workbench” of the EU Commission and, above all, support and coordinate the activities of the national supervisory authorities. Apart from the fact that the de facto legislative competence of the ESAs, which in turn are only partly controlled by the European Parliament, it is strange that the industry should pay for the standard setter, especially if the standard setter does not supervise the industry at all. In our view, a separate fee or levy system is only justified where the ESAs authorize and supervise directly. Not only the EU Commission, but also the national supervisory authorities in particular must remain on board. This also to prevent the ESAs from creating further competences by themselves in the future and to
avoid a bureaucratic proliferation. More and more, we need competent and influential national supervisory authorities on the one hand, and a coordinating central unit where all important information is brought together, are needed to counteract systemic risks and regulatory arbitrage. For this reason, too, we are critical of the proposals that have just been presented, and we will intervene constructively in coordination with our members – particularly via the BAI Specialists’ Committee on fund and market regulation.

**Are Blockchain & Co. revolutionizing also the asset management industry?**

For almost two years now, digitization, FinTech, Blockchain & Co. are on the BAI agenda with specialists’ articles, a BAI Insight on the topic of "FinTech & Co. – the asset management industry in disruptive change?!", discussion forums for members and of course the direct exchange with the FinTech industry, supervision and politics.

Of course, the exchange with the science is also of particular importance, and we are pleased to be able to devote a full-day seminar to the topic of "Blockchain, Asset Management and Venture Capital" together with the Frankfurt School Blockchain Center. It is obvious that blockchain technology will fundamentally change asset management and venture capital in the coming years. Not only the management or administration of assets, the due diligence process, etc. is affected, but above all blockchain technology opens new investment opportunities.

So, on 23 November, let us look at the following questions, among others:

- What is the potential impact of the blockchain technology on asset management and venture capital?
- How do investment processes and administrative processes change?
- What investment opportunities arise from blockchain technology?
- How should crypto currencies be judged? What are the opportunities and risks?
- Which startups work in the disruptive area of blockchain technology?
- How can the Blockchain technology and processes that are handled with it be legally classified?

The Blockchain or Distributed Ledger technology (DLT) is a hot topic in many industries. The assessments and expectations range from complete upheavals to qualification as a pure hype topic. Based on real-world projects that are currently being implemented, we would like to illustrate the individual technology building blocks and discuss the effects of blockchain technology on the area of asset management. So, join us. There are still some places available. Registration is possible via the BAI homepage in the event calendar.

**Are sustainable investments also on the verge of a breakthrough in Germany?**

At the end of September, the PRI Annual Congress took place in Berlin. The aim of the PRI initiative, which is primarily organized by asset owners and supported by the United Nations (UN), is to better
understand the impact of investment activities on environmental, social and corporate governance issues (Environmental, Social, Governance – ESG). From the signatories that have signed the Principles for Responsible Investments (PRI) (362 asset owners, 1227 investment managers and 230 service providers managing a total of around 70 trillion assets under management (AuM) worldwide), only a very small proportion have so far come from Germany. Investors from Great Britain, France, the Netherlands, Switzerland and Brazil, for example, are much stronger represented and involved. But the interest is also growing in Germany, however, and the PRI network has already drawn up a roadmap for Germany, which includes the following recommendations for key points for decision-makers from politics and business to promote responsible investment in Germany, also taking into account fiduciary obligations:

- Amending the insurance supervisory law with the clarification that financial ESG factors of significance for institutional investors must be considered.
- Development and use of tools and guidelines, including training and best practice case studies to support German pension funds and pension schemes in dealing with ESG aspects within the framework of the implementation of relevant EU directives (IORP II and Shareholder Rights Directive).
- Clear guidelines from BaFin/BMF for asset managers for the systematic consideration of financially significant ESG aspects in the context of the Capital Investment Code (Kapitalanlagegesetzbu - KAGB).
- Observance of ESG aspects by the financial market supervisory authorities, also with regard to financial market stability.

In these recommendations and demands is music, and they go far beyond a voluntary commitment. Reason enough for investors and asset managers and, of course, the BAI to deal intensively with this topic. We therefore dedicate the December issue of the BAI Newsletter to the topic of "Sustainable Investments and ESG", including a guest contribution from a representative of the PRI initiative. If you are also interested in submitting a technical paper on this topic in the next BAI Newsletter, please contact the BAI Office.

The BAI welcomes member no. 180!

BNP Paribas Asset Management is the 180th member of the BAI. A further round milestone has been reached and we are pleased with this sustained positive development in the number of members, which underpins our association’s strategy, which is geared to the needs of institutional investors across all product and asset classes. On our homepage and in the section with the presentations of our new members you will find further information about our recently added new members.

To the articles in this newsletter

This BAI Newsletter focuses on the topic of infrastructure.

We have been working intensively on this investment segment and asset class for years and have co-developed it – especially on the regulatory side – for German investors, in particular with our Due
Diligence Questionnaire for infrastructure investments, the first of its kind, or accompanying the introduction of the asset class “qualifying infrastructure investments” under Solvency II.

For the industry and investors, we are once again creating real added value in an important segment of the AI universe and therefore dedicate this newsletter to this asset class with the following specialist articles:

- “Schuldgeschäfte” (”Debt transactions“ – in German) by Jörg Schomburg, AXA Investment Managers Deutschland GmbH
- ”Erneuerbare Energien – fallende Kosten als maßgeblicher Treiber aktueller und zukünftiger Investmentopportunitäten“ (”Renewable energies – falling costs as a key driver of current and future investment opportunities“ – in German), an interview with John Breckenridge, Capital Dynamics
- "Offshore-Wind: Anlagechancen für institutionelle Investoren" (Offshore wind: Investment opportunities for institutional investors“ – in German) by Dr. Tobias Reichmuth, SUSI Partners AG
- "Infrastruktur als attraktive Anlage für Versicherer und Altersvorsorgeeinrichtungen" (”Infrastructure as an attractive investment for insurers and pension fund institutions“ – in German) by Dr. Sofia Harrschar, Universal-Investment.

An interesting reading wishes

Frank Dornseifer