

# Public consultation on the review of the MiFID II/MiFIR regulatory framework

Fields marked with \* are mandatory.

## Introduction

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SECTIONS 1 and 3 of this consultation are also available in other 22 European Union languages.

SECTION 2 will be available in English only.

If you wish to respond in another language than English, please **use the language selector above to choose your language.**

## Background of this public consultation

As stated by [President von der Leyen in her political guidelines for the new Commission](#), “*our people and our business can only thrive if the economy works for them*”. To that effect, it is essential to complete the Capital Markets Union (‘CMU’), to deepen the Economic and Monetary Union (‘EMU’) and to offer an economic environment where small and medium-sized enterprises (‘SMEs’) can grow.

In the light of the mission letter to Executive Vice President Dombrovskis, the Commission services are speeding up the work towards a CMU to diversify sources of finance for companies and tackle the barriers to the flow of capital. The Action Plan on the **Capital Markets Union** as announced in [Commission Work Program for 2020](#) will aim at better integrating national capital markets and ensuring equal access to investments and funding opportunities for citizens and businesses across the EU.

In addition, the new **Digital Finance Strategy** for the EU aims to deepen the Single Market for digital financial services, promoting a data-driven financial sector in the EU while addressing its risks and ensuring a true level playing field via enhanced supervisory approaches. And the revamped Sustainable Finance Strategy will aim to redirect private capital flows to green investments.

Finally, in the context of the [Communication on the International role of the euro](#), the Commission has published a recommendations on how to increase the role of the euro in the field of energy. Furthermore, the Commission consulted market participants to understand better what makes the euro attractive in the global arena. Based on those consultations, the Commission has produced a Staff Working Document that provides an update on initiatives, and raises considerations for specific sectors such as commodity markets.

The Directive and Regulation on Markets in Financial Instruments (respectively [MiFID II – Directive 2014/65/EU](#) – and [MiFIR – Regulation \(EU\) No 600/2014](#)) are cornerstones of the EU regulation of financial markets. They promote financial markets that are fair, transparent, efficient and integrated, including through strong rules on investor protection. In doing so, MiFID II and MiFIR support the objectives of the CMU, the Digital Finance agenda, and the Sustainable Finance agenda.

## Responding to this consultation and follow up to the consultation

In this context and in line with the [Better Regulation principles](#), the Commission has decided to launch an open public consultation to gather stakeholders' views.

The Commission's consultation and separate [ESMA consultations on the functioning of certain aspects of the MiFID II /MiFIR framework](#) are complementary and should by no means be considered mutually exclusive. The Commission and ESMA consult stakeholders with respect to their specific area of competence and responsibility and with the objective to gather important guidance for any future course of action on respective sides. Both the ESMA reports and this consultation will inform the review reports for the European Parliament and the Council (see Article 90 of MiFID II and Article 52 of MiFIR), including legislative proposals where considered necessary.

This consultation document contains three sections.

**The first section aims to gather views from all stakeholders (including non-specialists) on the experience of two years of application of MiFID II/MiFIR.** In particular, it will gather feedback from stakeholders on whether a targeted review of MiFID II/MiFIR with an ambitious timeline would be appropriate to address the most urgent shortcomings.

**The second section will seek views of stakeholders on technical aspects of the current MiFID II/MiFIR regime.** It will allow the Commission to assess the impact of possible changes to EU legislation on the basis of proposals already put forward by stakeholders in the context of previous public consultations and studies (e.g. study on the effects of the unbundling regime on the availability and quality of research reports on SMEs and study on the digitalisation of the marketing and distance selling of retail financial service) and in the context of exchanges with experts (e.g. in the European Securities Committee or in workshops, such as the workshop on the scope and functioning of the consolidated tape). This second section focuses on a number of well-defined issues.

**The third section invites stakeholders to draw the attention of the Commission to any further regulatory aspects or identified issues** not mentioned in the first and second sections.

**This consultation is open until 18 May 2020.**

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-mifid-r-review@ec.europa.eu](mailto:fisma-mifid-r-review@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

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| <input type="radio"/> Academic/research institution | <input type="radio"/> EU citizen                          | <input type="radio"/> Public authority |
| <input type="radio"/> Business association          | <input type="radio"/> Environmental organisation          | <input type="radio"/> Trade union      |
| <input type="radio"/> Company/business organisation | <input type="radio"/> Non-EU citizen                      | <input checked="" type="radio"/> Other |
| <input type="radio"/> Consumer organisation         | <input type="radio"/> Non-governmental organisation (NGO) |  |

\* First name

Josina

\* Surname

KAMERLING

\* Email (this won't be published)

josina.kamerling@cfainstitute.org

\* Organisation name

*255 character(s) maximum*

CFA Institute

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

\* Country of origin

Please add your country of origin, or that of your organisation.

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- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
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| <input type="radio"/> Denmark                                | <input type="radio"/> Liberia     | <input type="radio"/> Saint Lucia  |  |

\* Field of activity or sector (if applicable):

*at least 1 choice(s)*

- Operator of a trading venue (regulated market, MTF, OTF)
- Systematic internaliser
- Data reporting service provider
- Data vendor
- Operator of market infrastructure other than trading venue (clearing house, central security depositary, etc)
- Investment bank, broker, independent research provider, sell-side firm

- Fund manager (e.g. asset manager, hedge funds, private equity funds, venture capital funds, money market funds, institutional investors), buy-side entity
- Benchmark administrator
- Corporate, issuer
- Consumer association
- Accounting, auditing, credit rating agency
- Other
- Not applicable

\* Please specify your activity field(s) or sector(s):

Association of investment professionals

\* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**  
Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public**  
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

## Choose your questionnaire

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\* Please indicate whether you wish to respond to the **short version (7 questions)** or **full version (94 questions)** of the questionnaire.

The **short version** only covers the **general aspects of the MiFID II/MiFIR regime**

The **full version** comprises 87 additional questions addressing **more technical features**.

The full questionnaire is only available in English.

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- I want to respond only to the **short version** of the questionnaire

- I want to respond to the **full version** of the questionnaire

## Section 1. General questions on the overall functioning of the regulatory framework

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The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU ([MiFID I - Directive 2004/39/EC](#).) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union's share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

### **Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?**

- 1 - Very unsatisfied
- 2 - Unsatisfied
- 3 - Neutral
- 4 - Satisfied
- 5 - Very satisfied
- Don't know / no opinion / not relevant

### **Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



The implementation of the MiFID II/MiFIR framework has contributed to increasing transparency and efficiency in markets. However, its impact on financial markets is still unclear, and the different interpretation in the implementation of rules and guidelines across member states have resulted in an uneven playing field for market participants.

The new unbundling rules on investment research do not seem to have benefited independent research firms. According to several opinion surveys and discussions with our members in the financial services industry, it would appear that quality and coverage of research may have gone down depending on the sector and asset type, but this may not be necessarily due to the implementation of new rules as, for instance, quality has had a downward trend for several years. Nevertheless, since this is an important issue, a detailed analysis on the causes of such trends should be carried out.

Another issue that we would like to point out is the lack of key information provided in the suitability reports. Investment firms seldom seem to include in these reports a clear explanation of how the characteristics of the recommended product match all of the client's requirements. This issue was particularly raised by BaFin in 2019. The German authority found that many suitability reports contain general formulaic statements without providing any additional information.

Our European members believe that some improvements on the current product governance rules are needed. In December 2019, CFA Institute conducted a survey among CFA charterholders in the EU, on the topics of product governance and investor reporting requirements. The main points from the questions on product governance are summarised below:

- 51% of respondents thought that more care is now given to product design and marketing to ensure the right products are reaching their target client base, since the introduction of MiFID II.
- 41% think MiFID II has improved the understanding distributors and advisors have of the investment products they market, thanks to more effective communication with the product manufacturers. 37% saw no change and 22% still think distributors and advisors have a poor level of understanding.
- 57% of respondents think the administrative process required to assess an investor' suitability prior to making an investment has become too complicated, should be simplified and clarified.
- 54% of respondents think investors obtain enough information, yet they think these investors are probably struggling to understand the information due to its complexity.

We will be publishing a complete report based on the results of this survey shortly.

**Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 2.1 Please provide qualitative elements to explain your answers to question 2:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?**

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

**Question 3.1 Please explain your answer to question 3:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our societies flagged that national competent authorities have implemented many rules of the MiFIR/MiFID II framework in different manners. For example, the ESMA guidelines on the assessment of the necessary knowledge and competence requirements of investment firms' staff have been interpreted differently across the EU. The diverse criteria set out at national level create an obstacle hindering the cross-border mobility for professionals giving investment advice or providing information about financial instruments. Another issue raised by some of our Italian members is the existence of well-informed investors (i.e. an intermediate category between retail and professional investors), which is recognised only in some member states, or with reference to a certain type of financial instruments, such as ELTIF and EuVECA funds. A further case in point is the need to file the KID in each country of distribution: this requirement is not applied consistently in all member states.

**Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?**

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

**Question 4.1 Please explain your answer to question 4:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CFA Institute conducted a survey in end 2018 to better understand the impact of the MiFID II rules in the financial markets after one of implementation. The survey highlights that the majority of sell-side market players believe that pre-and post-trade transparency in equity markets has improved, while most buy-side professionals argue that the transparency levels are unchanged. Given that the scope of MiFIR/MiFID II is smaller in fixed income markets as many categories of bonds are considered illiquid (thus, do not fall under the pre- and-post trade transparency regime), transparency seems to have neither increased nor decreased after the implementation of the new rules.

**Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?**

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

**Question 5.1 Please explain your answer to question 5:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The more relaxed regime for Systematic Internalisers has contributed to shifting trading from lit to dark pools. Order flow, which is now aggregated and executive under the large in-scale exemption, has significantly moved to SIs. The current regime has favoured the creation of broker-crossing networks by SIs, and caused the movement of trading away from public markets. The Autorité des Marchés Financiers' (AMF) data, which were gathered few months after the implementation of MiFID II rules, showed a significant increase in total market share traded in SIs and a large movement away from trades in lit markets.

**Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?**

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

**Question 6.1 Please explain your answer to question 6:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## **Section 2. Specific questions on the existing regulatory framework**

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The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. Except for the largest or most sophisticated market players (who can purchase consolidated data pertaining to the different execution venues from data vendors or build their own aggregated view of the market), investors have no overall picture of a fragmented trading landscape: while the trading often used to be concentrated on one national exchange, notably in equities, investors can now choose between multiple competing trading venues, which results in a more fragmented and hence more complex trading landscape. At the same time, fragmentation per se should not be discarded as it is inherent to the introduction of alternative trading systems (MTFs, OTFs) which has led to a significant increase in competition between trading venues with positive effects on trading costs and increased execution quality. This section seeks stakeholders' feedback on how to improve investors' visibility in the current trading environment via the establishment of a consolidated tape.

In order to optimise the trading experience, a single price comparison tool consolidating trading data across the EU - referred to as the consolidated tape ('CT') - would help brokers to locate liquidity at the best price available in the European markets, and increase investors' capacity to evaluate the quality of their broker's performance in executing an order. A European CT could also be one major step towards "democratising" access to "market data" so that all investors can see what the best price is to buy or sell a particular share. A CT may not only prove useful for equities but also for exchange-traded funds (ETFs), bond or other non-equity instruments. Practical experience with a consolidated tape is already available in the United States, where a consolidated tape has been mandated for shares (consolidating pre- and post-trade data) and bonds (post-trade data).

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade information). MiFID II /MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 [ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments](#). This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g. shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II /MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

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<sup>1</sup> The review clauses in Article 90 paragraphs (1)(g) and (2) of MiFID II and Article 52 paragraphs (1), (2), (3), (5) and (7) of MiFIR are covered by this section.

## PART ONE: PRIORITY AREAS FOR REVIEW

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The issues in PART ONE are identified by the Commission services as priority areas for the review based on the experience gathered in the two years of implementation of MiFID II/MiFIR. Many of them are listed in the review clauses of MiFID II and MiFIR which means that the Commission needs input to assess the merit of amending the provisions to make them more effective and operational. When applicable, references are made to the applicable review clause.

Other topics not listed in the review clauses stem from the many contributions received from stakeholders, including public authorities, on possible shortcomings of the existing framework. A number of questions in subsection II on investor protection in particular fall in the latter category

## I. The establishment of an EU consolidated tape<sup>1</sup>

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### 1. Current state of play

This section discusses the absence of a CT under the current MiFID II/MiFIR framework, the issues of availability of market data for market participants and the use cases for setting up a CT.

#### 1.1. Reasons why a consolidated tape has not emerged

Article 65 of MIFID II provides for a framework for a post-trade CT in equity and non-equity instruments further detailed in regulatory technical standards. The framework specifies key functioning features that a potential CT should adhere to, such as the content of the information that a CT should consolidate as well as its organisational and governance arrangements.

Since no CT provider has emerged so far, there is a lack of practical experience with the CT framework under MiFID II /MiFIR. Several reasons have been put forward to explain the absence of a CT.

**Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Lack of financial incentives for the running a CT	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 7.1 Please explain your answers to question 7:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A multiplicity of factors has made difficult introducing an EU consolidated tape. The most important issues that our societies have raised are:

- The fragmentation of EU exchanges and other trading venues is a challenge for the adoption of a single tape.
- the increased availability of products in the market, and the complexity of pricing models.
- the feasibility for a consolidated tape in gathering data about trading volumes when investment firms monitor SI's activities.

Some of our Polish members would like to see a more active role by the European Commission and EU institutions as an initial proposal could be to set up a detailed plan on the collection and dissemination of last sale information of at least certain listed securities.

**Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards ([Regulation \(EU\) 2017/571](#))) would you consider appropriate to incorporate in the future consolidated tape framework?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

## **1.2. Availability and price of market data**

In its report submitted on 5 December 2019 to the Commission, ESMA considers that so far MiFID II/MiFIR has not delivered on its objective to reduce the price of market data and the Reasonable Commercial Basis ('RCB') provisions have not delivered on their objectives to enable users to understand market data policies and how the price for market data is set.

ESMA recommends, in addition to working on supervisory guidance on how the RCB requirements should be complied with, a number of targeted changes to either the Level 1 or Level 2 texts to strengthen the overall concept that market data should be charged based on the costs of producing and disseminating the information:

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information;
- delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

**Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

### 1.3. Use cases for a consolidated tape

#### Question 10. What do you consider to be the use cases for an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>



## Please specify what are the other use cases for an EU consolidated tape that you identified?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A single consolidated tape for market prices would be used to better integrate European equity markets and have greater access to trade transparency data. A EU tape of record would facilitate best execution and its measurement, and improve the level playing field amongst market participants.

## Question 10.1 Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

## 2. General features of the consolidated tape

This section discusses the general features of a future European CT. The specific scope of the CT in terms of financial instruments (shares, bonds, derivatives) and type of transparency (pre- and/or post-trade) are addressed in the following section.

During the EC workshop, the ESMA consultation, conferences and stakeholder meetings, it became clear that a majority of market participants believe that EU financial markets would benefit from the establishment of a CT. ESMA made the following recommendations<sup>2</sup> which appear very important for the success of an EU consolidated tape:

- ensuring a **high level of data quality** (supervisory guidance complemented with amendments of the Level 1 and 2 texts);
- **mandatory contributions**: trading venues and APAs should provide trading data to the CT free of charge;
- CT to **share revenues with contributing entities** (on the basis of an allocation key that rewards price forming trades);
- contribution of users to funding of the CT, e.g. via **mandatory consumption** of the CT by users to ensure user contributions to the funding of the CT
- **full coverage**: The CT should consolidate 100% of the transactions across all asset classes (with possible targeted exceptions);
- **operation of the CT on an exclusive basis**: ESMA recommends that a CT is appointed for a period of 5-7 years after a competitive appointment process;
- **strong governance framework** to ensure the neutrality of the CT provider, a high level of transparency and accountability and include provisions ensuring the continuity of service.

The EC workshop, conferences and stakeholder meetings revealed that opinions remained divergent on a variety of issues, notably:

- Whether pre-trade data should be included in CT:** the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- What should be the latency of the tape:** Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- How to fund the tape and redistribute its revenues:** stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

<sup>2</sup> ESMA recommendations are limited to an equity post-trade CT (as foreseen in their legal mandate). The current section however is not limited to pre-trade transparency and equity instruments and stakeholders should express their view on the appropriate scope of transparency (pre- and/or post-trade) and financial instruments covered.

**Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory consumption	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The existence of an order protection rule	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?**

**Please explain your answer and provide if possible detailed suggestions on which users should be mandated to consume the tape and how this should be organised:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 13. In your view, what link should there be between the CT and best execution obligations?**

**Please explain your answer and provide if possible detailed suggestions (e.g.**

**simplifying the best execution reporting through the use of an EBBO reference price benchmark):**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please look at our response to question 10: achievement of best execution for market participants, and its better measurement would be the primary purpose of a single consolidate tape for EU equity markets.

**Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should**

**be redistributed; how price forming trades should be rewarded, alternative funding models):**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our Italian members suggest that an alternative funding model could involve also NCAs contributions as they play a major role in ensuring market efficiency. The model would be based on public and private contributions. Redistributions would be made only after an initial period of time in order to identify the necessary IT costs to develop the CT.

**3. The scope of the consolidated tape**

**3.1. Pre- and post-trade transparency and asset class coverage**

This section discusses the scope of the CT: what asset classes should be covered and what trade transparency data it should include. This section also discusses how to delineate, within an asset class, the exact scope of financial instruments that should be included in the CT.

**Question 15. For which asset classes do you consider that an EU consolidated tape should be created?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade <sup>3</sup>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
ETFs pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Corporate bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Government bonds pre-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Interest rate swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps pre-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<sup>3</sup> Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to be order book quote data for at least the five best bid and offer price levels. Post-trade market data is understood to be transaction data.

### Question 15.1 Please explain your answers to question 15:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Aggregate data should be considered above all for shares, ETFs, corporate and government bonds. However, we believe that the scope of an EU consolidated tape should be extended as much as possible for the access to pre-trade information, including asset classes that are liquid enough and when the business model is economically satisfactory.

Another important element in the design of the CT will be to determine the exact content of the information that a pre- and/or post-trade CT should consolidate in relation to the information already disseminated under the MiFIR pre- and post-trade transparency requirements. While Article 65 of MiFID II and the relevant regulatory technical standards specify the exact content of the post-trade information a CT should consolidate under the current framework, there is no such specification for pre-trade information.

### Question 16. In your view, what information published under the MiFID II /MiFIR pre- and post-trade transparency should be consolidated in the tape (all information or a subset, any additional information)?

**Please explain your answer, distinguishing if necessary by asset class and pre- and post-trade. Please also explain, if relevant, how you would identify the relevant types of transactions or trading interests to be consolidated by a CT:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Ideally, all information required under the MiFIR/MiFID II pre- and post- trade transparency regime should be published in an EU consolidated tape. However, we believe that at least quote and trade data on European equity markets should be included in an EU consolidated tape, to improve market transparency, fairness and efficiency.

### 3.2. The Official List of financial instruments in scope of the CT

To provide market participants with legal clarity, a CT would benefit from a list setting out, within a given asset class, the exact scope of financial instruments that need to be reported to the CT. This section discusses, for each asset class, how to best create an “Official List” of financial instruments that would feature in the CT, having regard to the feasibility of producing such a list.

#### Shares

There are different categories of shares traded on EU trading venues, including: (i) shares admitted to trading on a Regulated Market (RM) - for which a prospectus is mandatory; (ii) shares admitted to trading on an Multilateral Trading Facility (MTF) (e.g. small cap company listed on the small cap MTF) with a prospectus approved in an EU Member State; (iii) shares traded on an EU MTF without a prospectus approved in a EU Member State (e.g. US blue chip company listed on a US exchange but also traded on a EU MTF). While the first two categories have a clear EU footprint and should be considered for inclusion in the CT, the inclusion of the latter category is more questionable because it consists of thousands of international shares for which the admission's venue or the main centre of liquidity is not in the EU.

#### Question 17. What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

#### Question 17.1 Please explain your answers to question 17:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Irrespective of the trading venue where they are traded, all shares should be included in the scope of the EU consolidate tape.

**Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Filtering data on the basis of liquidity of other additional criteria would increase complexity in data management. Our societies argue that data on all shares should be included in the official list of an EU consolidated tape and no distinction should be at least envisaged initially.

**Question 19. What flexibility should be provided to permit the inclusion in the EU consolidated tape of shares not (or not only) admitted to an EU regulated market or EU MTF?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A certain degree of flexibility should be provided in order to allow the inclusion of data regarding shares that are not traded in EU regulated markets and MTFs in the consolidated tape.



## ETFs, Bonds, Derivatives and other financial instruments

**Question 20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?**

**Please explain your answer and provide details by asset class:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

### **4. Other MiFID II/MiFIR provisions with a link to the consolidated tape**

#### **4.1. Equity trading and price formation**

The share trading obligation ('STO') requires that EU investment firms only trade shares on eligible execution venues, unless the trades are non-systematic, ad-hoc, irregular and infrequent ("*de minimis*" exception) or do not contribute to the price discovery process. The STO can pose an issue when EU investment firms wish to trade international shares admitted to a stock exchange outside the EU as not all stock exchanges outside the EU are recognised as equivalent. The European Commission recognised as equivalent certain stock exchanges located in the United States, Hong Kong and Australia, with the consequence that those stock exchanges are eligible execution venues for fulfilling the STO. In addition, ESMA provided, in coordination with the Commission, further guidance on the scope of the STO.

**Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?**

- 1 - Not at all
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don't know / no opinion / not relevant

**Question 22.1 Please explain your answer to question 22:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 23. What is your evaluation of the general policy options listed below as regards the future of the STO?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain the STO with adjustments (please specify)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Repeal the STO altogether	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 23.1 Please explain your answers to question 23:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current framework on STO should be maintained. Our members underline that the current rules already include exemptions for equivalent trading venues. In addition, our Italian members emphasise that many trading venues already use specific facilities to block trades.

Price formation is an important aspect of equity trading which is recognised with the requirement under the STO to execute price-forming trades on eligible venues. At the same time, there is a debate about the status of systematic internalisers ('SIs') as eligible venues under the STO.

**Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 24.1 Please explain your answers to question 24:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 25. Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

More generally, there are questions raised as to whether the current MiFID II/MiFIR framework is sufficiently conducive of the price discovery process in equity trading, in light of various elements of complexity (e.g. fragmentation of trading, multiplicity of order types, exceptions to transparency requirements, variety of trading protocols).

**Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

## 4.2. Aligning the scope of the STO and of the transparency regime with the scope of the consolidated tape

For shares, in light of the strong parallel between the scope of the STO and the scope of the CT (see section “Official List”), there may be merit in aligning the two. At the same time, should the scope of the STO be the same as the scope of the CT, special consideration should be given to the treatment of international shares.

### Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

#### Question 28.1 Please explain your answer to question 28:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, an alignment between the scope of the STO and the EU consolidated tape would increase consistency of rules.

Similarly, both for equity and non-equity instruments, there may also be merit in aligning, where possible, the scope of financial instruments covered by the CT with the scope of financial instruments subject to the transparency regime.

### Question 29. Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

#### Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, ideally the same asset classes that fall under the scope of the MiFID II pre-and post-trade rules should be included in the list of instruments that are in the scope of the consolidated tape.

### 4.3. Post-trade transparency regime for non-equities

For non-equity instruments, MiFID II/MiFIR currently allows a deferred publication of up to 2 days for post-trade information (including information on the transaction price), with the possibility of an extended period of deferral of 4 weeks for the disclosure of the volume of the transaction. In addition, national competent authorities have exercised their discretion available under Article 11(3) of MiFIR. This resulted in a fragmented post-trade transparency regime within the Union. Stakeholders raised concerns that the length of deferrals and the complexity of the regime would hamper the success of a CT.

**Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Keeping the current regime	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 30.1 Please explain your answer to question 30:**

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

## II. Investor protection<sup>4</sup>

**Investor protection rules** should strike the right balance between boosting participation in capital markets and ensuring that the interests of investors are safeguarded at all times during the investment process. Maintaining a high level of transparency is one important element to enhance the trust of investors into the financial market.

In December 2019, the [Council conclusions on the Deepening of the Capital Markets Union](#) invited the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not excessive or overlapping in quantity and content.

Based on, but not limited to, the review requirements laid down in Article 90 of MiFID II, this consultation therefore aims at getting a more precise picture of the challenges that different categories of investors are confronted with when purchasing financial instruments in the EU, in order to evaluate where adjustments would be needed.

<sup>4</sup> The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

**Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.**



**Quantitative elements for question 31.1:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 31.1:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

New product intervention rules have succeeded in ensuring more investor protection for complex products, whose marketing to retail investors can now be restricted by national competent authorities. However, the diversity of investor documents that providers need to prepare for their clients have given rise to complexity and confusion. This is due to inconsistencies and overlaps across financial services-related legislative frameworks such as MiFID II/MiFIR, PRIIPs and UCITS.

## Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs and charges requirements	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

### 1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

### Question 32.1 Please explain your answer to question 32:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CFA Institute is in favour of a simplification of product governance requirements in order to ensure easier access to simple investment products for clients.

In December 2019, CFA Institute carried out a EU-wide survey on the topic of product governance and investment reporting requirements in the context of the MiFID II and PRIIPs frameworks. The majority of investment professionals, who responded to our survey, stressed the complexity of the administrative process for the suitability process of investors. The process is also unclear and needs more clarification. 54% of survey respondents also remarked that most retail investors struggle to understand the vast amount of information they receive because of its complexity.

Our Italian members underline that the provision of excessive complex information that is not needed and that, in many cases, discourages investments from retail clients, seems to lead to significant costs to

intermediaries in terms of IT implementations and alignment with other players in the distribution chain. furthermore, the disclosure is often inaccurate as some costs cannot be attributed to individual executions.

**Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 33.1 Please explain your answer to question 33:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, we agree that MiFIR/MiFID II rules have contributed to an increased level of investor protection, especially for complex products. In particular, product intervention powers granted to ESMA (with the possibility of prohibiting or restricting the marketing of particularly complex financial products to retail investors) have ensured more investor protection.

However, we would like to see more measures supporting financial education programmes for retail investors and future generations of investors. We understand that the European Commission is exploring ways to introduce innovative solutions supporting financial literacy in the EU.

Finally, we also believe that the duty of care that investment advisers owe to their clients should have more focus from supervisors, taking into account prudential and long-term concerns.

**2. Relevance and accessibility of adequate information**

Information should be short, simple, comparable, and thereby easy to understand for investors. One challenge that has been raised with the Commission are the diverging requirements on the information documents across sectors.

One aspect is the usefulness of information documents received by professional clients and eligible counterparties ('ECPs') before making a transaction ('ex-ante cost disclosure'). Currently, the ex-ante cost information on execution services apply to retail, professional and eligible clients alike. With regard to wholesale transactions a wide range of stakeholders consider certain information requirements a mere administrative burden as they claim to be aware of the current market and pricing conditions.

**Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?**

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Professional clients, irrespective of whether they are professional per se or on request, and ECPs should be allowed to opt out unilaterally from cost information obligation. Our societies underline that retail investors should never have the possibility to opt out.

Some members from CFA Society UK remark the opt-out process needs to be streamlined and proposes a more proportional regime for professionals and ECPs clients. ECPs should continue to be allowed to bilaterally opt-out (outright), whereas further considerations should be given to proportionate application to per-se professional clients, who are currently only allowed to opt-out for execution only services (i.e. except portfolio management, investment advice, and if the transaction involves a complex product).

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustainable Finance Agenda** and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a “durable medium”, which includes electronic formats (e.g. e-mail) but also paper-based information.

**Question 35. Would you generally support a phase-out of paper based information?**

- 1 - Do not support
- 2 - Rather not support
- 3 - Neutral
- 4 - Rather support
- 5 - Support completely
- Don't know / no opinion / not relevant

**Question 35.1 Please explain your answer to question 35:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, we would support a phase-out period to give more time and flexibility for the industry to adapt to complete paperless information system. We also believe that during this transition, supervisory authorities

should focus more on financial education for investors. Investment advisers also need to be trained on how to offer products and face clients. Financial education programmes could be based on the concepts of behavioural finance and nudging.

**Question 36. How could a phase-out of paper-based information be implemented?**

	Yes	No	N. A.
General phase-out within the next 5 years	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Clients should always have the possibility to get paper-based information if they wish. Electronic based-information could be provided when clients do not explicitly opt out from receiving traditional paper-based data.

Some members of CFA Society Italy suggest that with regard to information on costs and charges, an alternative solution could also be envisaged in the form of provision of ex-post data on a regular and frequent basis (e.g. monthly).

Some retail investors deplore the lack of comparability of the cost information and the absence of an EU-wide database to obtain information on existing investment products.

**Question 37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?**

- 1 - Do not support
- 2 - Rather not support
- 3 - Neutral
- 4 - Rather support

- 5 - Support completely
- Don't know / no opinion / not relevant

**Question 37.1 Please explain your answer to question 37:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Developing such EU-wide database can be beneficial for investors who would much easily compare different types of investment products. Some members from CFA Society France also underline that currently a comparison between different products can only be made by publishing separately financial products' reference documents. This tool would allow for ad-hoc tailor-made comparison between financial products. However, as some members from CFA Society Italy point out, niche and peculiar products could be difficult to compare. Moreover, not all products are equally accessible throughout the single market as member states can individually negate the authorisation for certain products. Given the last point, the database could be administered by ESMA if more regulatory and supervisory powers are granted to the authority.

**Question 38. In your view, which products should be prioritised to be included in an EU-wide database?**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UCITS KIID	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 38.1 Please explain your answer to question 38:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Transferable securities and PRIIPs KID/UCITS KIID could be prioritised for this database. In general, standard products are those that can be more easily compared, and therefore included initially in this tool.

**Question 39. Do you agree that ESMA would be well placed to develop such a tool?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 39.1 Please explain your answer to question 39:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, ESMA would be the ideal authority to be responsible for the development of this tool. However, as remarked in our response to q. 37, ESMA should be empowered with more supervisory tasks and powers.

### 3. Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors<sup>5</sup>. The CMU-Next group suggested a new category of experienced High Net Worth (“HNW”) investors with tailor made investor protection rules<sup>6</sup>.

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<sup>5</sup> According to the draft of the Crowdfunding Regulation (to be finalised in technical trilogues) a sophisticated investor has either personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000.

<sup>6</sup> According to the CMU-NEXT group “HNW investors” could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

### Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 40.1 Please explain your answer to question 40:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our members stress that the current opt-in regime based on experience has some flaws. our Italian members argue that the criterion of sufficient financial activity cannot be assessed objectively as it does not specify when a transaction can be considered as relevant. In addition, for professional experience, MiFID II rules only take work experience in the financial sector into account and disregard other type of experience such as management expertise.

**Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 41.1 Please explain your answer to question 41:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 42.1 Please explain your answer to question 42:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Creating a new category of semi-professionals clients would be beneficial for those with a large portfolio to have access to those products that cannot be offered to retail investors. However, as the CFA Institute Statement of investment rights states, we remind that firms should provide an advice or product that is suitable to the client, regardless whatever category he/she belongs to, taking into account financial



objectives and constraints.

With the introduction of this new category, the duty of care that investment firms and advisers owe to their (retail) clients must be even stronger. Firms must provide maximum transparency (and communication) with regard to the exercise of their fiduciary responsibility. The joint CFA Institute/Better Finance study 'Sustainable Value for Money' clearly shows that both finance professionals and retail investors are in favour of a mandatory duty of care that financial advisers should owe to all investors and not only when offering products and services to retail investors

The CFA Institute Standards of Professional Conduct highlights that investment advisers should act for the benefit of their clients and place their clients' interests before their employer's and their own benefit.

Investment professionals must also exercise prudence when offering a particular product to any investor; prudence involves considering all the parameters set up by the investor and balancing risks and returns.

The topic of business conduct was largely discussed in a recent Symposium that CFA Institute held in Madrid a few months ago, with regulators from around the world. Acting on how products are marketed and the disclosure provided to clients is fundamental to prevent mis-selling cases. CFA Institute would be pleased to have a further discussion on such issues with the European Commission and ESMA.

Our members have contrasting views on the introduction of this new category of clients: for instance, some of our French members remark that the benefit would be not to have a binary distinction between professional and non-professional investors, while some of our Spanish members underline that the current exemptions already provide lighter requirements in some cases, and the introduction of a new category of clients could give rise to complications at operational level within organisations and clients.

We would also like to remark the suggestion from some of our Polish members, who remind that the main focus should be put on the education of all investors. Greater understanding of more complex products and analysis of the risks is fundamental. Having more educated and ethical market participants should be one of the main pillars on which transparent markets with clear rules are built.

### Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

#### Question 43.1 Please explain your answer to question 43:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process ?**

**Please specify which changes are one-off and which changes are recurrent:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 45. What should be the applicable criteria to classify a client as a semi-professional client?**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If a new category of semi-professional client is introduced, the classifying criteria could be knowledge of finance, which could be assessed through a test, and a certain amount of minimum investment portfolio.

#### **4. Product Oversight, Governance and Inducements**

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

**Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 46.1 Please explain your answer to question 46:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See part of our response to Q.32.

**Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?**

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It should apply only to complex products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes should be envisaged – please specify below.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 47.1 Please explain your answer to question 47:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see part of our response to q.32

Further, even though ESMA clarified in its guidelines that the sale of products outside the actual target market is possible in so far as this can “be justified by the individual facts of the case”, distributors seem reluctant to do so even if the client insists. This consultation is therefore assessing if and how the product governance regime could be improved.

**Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?**

- Yes
- Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
- No
- Don't know / no opinion / not relevant

### Question 48.1 Please explain your answer to question 48:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, but the investment firm should provide a written statement informing the client, and explaining the implications of investing in a product with negative target market. If the client insists in purchasing the product, the investment firm should be allowed to proceed with the sale of the product concerned.

MiFID II/MiFIR establishes strict rules for investment firms to accept inducements, in particular as regards the conditions to fulfil the quality enhancement test and as regards disclosures of fees, commissions and non-monetary benefits.

### Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 49.1 Please explain your answer to question 49:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Complete transparency on fee structures, total costs and charges, and possible conflicts of interest is not yet fully provided to investors. To act in the best interest of their clients, investment firms should also candidly provide complete information and breakdown of all fees investors are paying and the recipients of such fees. Remuneration structures should not only be exclusively based on sales, which are not the only metric for performance evaluation of client-facing investment professionals. Providing too many sales incentives may lead to conflicts of interest, and mis-selling of financial products.

Some consumer associations have stated that inducement rules inducements under MiFID II/MiFIR are not sufficiently dissuasive to prevent conflicts of interest in the distribution process. They consider that financial advisers are incentivised to sell products for which they receive commissions instead of recommending the most suitable products for their clients. Therefore, some are calling for a ban on inducements.

### Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 50.1 Please explain your answer to question 50:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Imposing a ban on inducements does not ensure better investor outcomes, especially for smaller clients. Restricting inducements can reduce conflicts of interest and the practice of marketing complex products, but it can give rise to negative consequences, especially for small investors that are expected to be served from fewer firms. Our Italian members are particularly concerned on this latter point and believe that if inducements are adequately mapped, disclosed, handled and monitored, they do not lead to significant risks. A strict ban, such as the one applied in the UK, could result in a significant increase in the cost of advice, and a shift from the mass-market segment of investors. This would lead to a drastic reduction in the access to sound advice for retail investors and choice in products.

In the Netherlands, where inducements are prohibited as well, banks are now selling their own in-house funds rather than focusing on good funds for their clients. Members from CFA Society Poland see the same possible consequences from the establishment of an outright ban: client would turn to large banking group, which would be tempted to offer their own products.

It is also noteworthy the slightly different point of view from some of our members from CFA Society France that would agree with a ban in order to further protect end investors. However, our French members are also concerned about the possible impact on production of research for SMEs as we have mentioned above. The question is whether market players would still be able to pay for research. A ban may, as a result, be ineffective as most of the financial advice is provided by integrated groups where banks prioritise products coming from their own asset managers.

As regards the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II, [ESMA's guidelines](#) established minimum standards promoting greater convergence in the knowledge and competence of staff providing investment advice or information about financial instruments and services. Nonetheless, due to the diversified national educational and professional systems, there are still various options on how to test the relevant knowledge and competences across Member States.

### Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 51.1 Please explain your answer to question 51:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Many national competent authorities already set out strict requirements as regards qualifications for the provision of investment advice. However, the current issue is that national criteria are not uniform, posing the challenge of mobility across member states. We are in favour of the introduction of a clear EU certification requirement for all investment professionals providing advice and other relevant services as this would reduce differences among member states in the assessment of knowledge and competence requirements, and create a better level playing field for all professionals offering financial advice.

Our societies agree on the benefits of setting up a certification requirement, but this has to be equally applied in all EU member states.

We do appreciate the stance that some regulators have taken in allowing firms to determine the most appropriate ways of assessing knowledge and competence.

Where the regulator has decided on a more prescriptive approach, we can see the value of linking the requirements to a country's qualification framework where one exists or the EQF (although not intended to be used in this way). Qualifications frameworks have been developed much more widely across Europe and indeed the world than four years ago.

## **Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### **Question 52.1 Please explain your answer to question 52:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to our response to Q 51: Yes, we believe that introducing a single framework for a certification at EU level could help clarify what investment professionals need to do to provide investment advice to clients in any EU country. Such a framework could be based, as proposed, on an exam but could also clearly specify the qualifications needed to operate in all EU member states.

We are concerned that as the assessments vary so much, whilst covering the minimum guidelines from ESMA, there is a risk to either levelling up or levelling down. For example, some countries requirements (UK, Ireland and France) seem to focus most on retail investment advice. The Netherlands has different examinations for retail and institutional investment advisers. Potentially the ESMA guidelines could give more guidance on the content, assessment, academic level and pass standards. However, as most countries now have a workable assessment methodology for advisers, this would increase costs for the market.

Further, we would expect to see grandfathering for those advisers and information providers who meet the current standards.

We feel that the approach taken by Luxembourg for example, where they will allow firms to recognise assessments of knowledge and competence from another member state to be appropriate. However, we are not advocating any regulatory arbitrage where an individual or firm deliberately qualifies under what they perceive as an "easier" route.



In particular, members from CFA Society VBA Netherlands made three important recommendations for the construction of an EU-wide framework on knowledge and competence:

1. Align implementation with needs and processes of the industry

The investment industry, employers and investment professionals themselves, has continuing education high on the agenda. They see this as an important way to further improve their services to clients and to regain trust of the society which was partly lost after the 2008 financial crisis. Especially in the institutional space, the countervailing power of clients is high, and therefore continuing education is considered a necessity. In this respect, the investment industry is fully aligned with the rationale behind the professional competence and knowledge requirements under MiFID II.

A program for maintaining one's knowledge and competence should be aligned with the intrinsic motivation that investment professionals have by nature, so that the objectives of improving the quality of investment services and protecting client interests are best served.

It is important to tailor the ways of examination to how investment professionals learn these days: content should be online, be accessible at any time at any place which also applies to the examination.

2. Take the Dutch system for maintaining knowledge and competence as an example

The current system the Netherlands is easily exportable to other member-states.

The main adaptation would be to formulate learning outcomes that are applicable to all member states.

Currently learning outcomes are partly only applicable to the Dutch market, which hampers cross-border implementation for international investment firms and mitigation of employees. The level of examinations should not differ significantly from one local market to the other. For this purpose, European standards as a reference framework could be used.

3. Expand the scope of the knowledge and competence requirements. Introduce also a certification requirement for professional decision-makers receiving / requesting investment advice or information.

One of the caveats of the current set-up is the assumption that professional clients are truly professional clients. Great steps have been made in the Netherlands, and emphasis has been placed on the professionalism of the investment professional. Observing the feedback and activities by our members in the association, this professionalism is taken seriously by our members; a lot of effort and education is spent on this.

This creates however a gap; asymmetric knowledge between the buy side (trustees, boards, investment staff) and sell side. This could be solved by expanding the scope of knowledge and competence requirements to the professional decision makers receiving or requesting investment advice or information.

## 5. Distance communication

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA's guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

**Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree

- Don't know / no opinion / not relevant

**Question 53.1 Please explain your answer to question 53:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?**

- 1 - Disagree  
 2 - Rather not agree  
 3 - Neutral  
 4 - Rather agree  
 5 - Fully agree  
 Don't know / no opinion / not relevant

**Question 54.1 Please explain your answer to question 54:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Recordkeeping requirements would help in the reduction of mis-selling practices over the phone.

**6. Reporting on best execution**

Investment firms shall execute orders on terms most favourable to the client. The framework includes reporting obligations on data relating to the quality of execution of transactions whose content, format and periodicity are detailed in Delegated Regulation 2017/575 (also known as 'RTS 27'). The best execution framework also includes reporting obligations for investment firms on the top five execution venues in terms of trading volumes where they executed client orders and information on the quality of information. Delegated regulation 2017/576 (also known as 'RTS 28') specifies the content and format of that information.

**Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?**

- 1 - Disagree  
 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 55.1 Please explain your answer to question 55:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 56. What could be done to improve the quality of the best execution reports issued by investment firms?**

	<b>1</b> (irrelevant)	<b>2</b> (rather not relevant)	<b>3</b> (neutral)	<b>4</b> (rather relevant)	<b>5</b> (fully relevant)	<b>N.A.</b>
Comprehensiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Format of the data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### Question 56.1 Please explain your answer to question 56:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

### Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 57.1 Please explain your answer to question 57:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

## III. Research unbundling rules and SME research coverage<sup>7</sup>

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New rules on unbundling of research and execution services have been introduced in MiFID II/MiFIR, principally to increase the transparency of research prices, prevent conflict of interests and ensure that research costs are incurred in the best interests of the client. In particular, unbundling of research rules were put in place to ensure that the cost of research funded by client is not linked to the volume or value of other services or benefits or used to cover any other purposes, such as execution services.

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<sup>7</sup> The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

### Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

The jury is still out on the actual medium to long term effects of MiFID II's unbundling rules on the quantity, quality and pricing of research. Establishing causality is particularly complicated as the market for research was already experiencing changes pre-enforcement of MiFID II, under the pressure from compressing margins, the rise of passive investments and the automation of processes.

CFA Institute has taken a keen interest in this question and was able to run two surveys of its membership on the potential effects of MiFID II unbundling rules on the market for research in the EU; one pre-enforcement and the latest one year after its implementation. High level observations included:

- A large proportion of buy-side firms have decided to pay for research themselves using their P&L.
- The research budget of buy-side firms has diminished, and even more so the greater the size of the firm. This could indicate the market is rebalancing its actual need for research now that it has to pay for it directly.
- Independent research firms seem to not benefit from the new rules. This can be seen as a problem, since the objectives of the regulation were clearly to facilitate the emergence of a new breed of independent research firms outside of the typical banking sector, where a number of identified conflicts appeared in the first place. Here, the question of whether competitive forces operate effectively should be considered.
- The question of quality is interesting, yet not conclusive. The perceived quality of research has not changed materially between the two surveys, which could indicate that it was already on a downward trend for other reasons, such as the economics of the sector. Yet, anecdotal evidence and occasional discussions with firms are pointing to portfolio managers noticing a clear trend towards the juniorisation of sell-side research and reports of lighter substance – yet the causality with MiFID II is difficult to establish.
- Another important aspect is that of coverage. The survey shows, like anecdotal evidence, that professionals feel coverage may have gone down to some extent, especially in the SME sectors. Again, such opinions should be fact-based to be more pertinent, but if that is the case, then clearly it could be an issue. Now, it should also be further analysed if research internalization may be compensating the lack of external research.
- Competition in the research market has increased, which could mean that prices are going down and firms are more careful about what they spend their P&L on.

The market is still adjusting to the new economic realities in a MiFID II world that has decided to unbundle research from execution prices. Regulators should continue to monitor how competition is developing and whether large firms are not creating an imbalanced system that prohibits the emergence of new research firms. Quality and coverage should also continue to be monitored; should there be a real problem in this regard, regulators should investigate the real reasons that are preventing the market from forming (if there is demand, supply should follow). Pricing is also an issue; historically, no one wanted to pay for research, so the question is how to facilitate price formation in the space and how to control this mechanism. Finally, regulators should better analyse the micro-structure of the various asset management markets in Europe (vertical vs horizontal integration) to determine if certain markets are affected differently. It could also be interesting to review if the entire administrative arsenal behind unbundling (tracking, reporting, alerts) is best-suited to yield the results that are expected; i.e., it should favour information circulation prone to facilitate capital raising in the SME space and the bureaucracy should not act as a deterrent that outweighs the potential benefit from unbundling for independent firms who are de facto not conflicted.

However, some of our members from CFA Society Italy and CFA Society Poland report that new rules appear to have negatively affected small firms. The quantity of equity research on SMEs has significantly decreased. Quality and pricing of SMEs research seem to have been negatively impacted in many local markets as well.

Overall, CFA Institute has a cautious view on the effect of unbundling rules. Our fear is that a return to bundling could create more confusion on disclosure of costs, which is already unclear for investors today. The 2016 CFA Institute survey 'From trust to loyalty' shows that the greatest gap between what retail investors want and what investment firms are delivering can be found in the clear explanation of all fees

before they are charged. Providing a clear context around all fees is fundamental, and for investors come also before the amount of costs and charges. Bundling investment research costs may lead to less clarity provided to investors.

Over the last years, research coverage relating to Small and Medium-size Enterprises ('SMEs') seems to suffer an overall decline. One alleged reason for this decline is the introduction of the unbundling rules. Less coverage of SMEs may lead to less SME investments, less secondary trading liquidity and less IPOs on Union's financial markets. This sub-section places a strong focus on how to foster research coverage on SMEs. There is a need to consider what can be done to increase its production, facilitate its dissemination and improve its quality.

## 1. Increase the production of research on SMEs

### 1.1. EU Rules on research

The absence of a harmonised definition of the notion of "research" has led to confusion amongst market participants. In addition, Article 13 of delegated Directive 2017/593 introduced rules on inducement in relation to research. Market participants argue that this has led to an overall decline of research coverage, in particular on SMEs. Several options could be tested: one option would be to revise the scope of Article 13 by authorising bundling exclusively for providers of SME research. Alternatively, independent research providers (not providing any execution services to clients) could be allowed to provide research to investment firms without these firms being subject to the rules of Article 13 for this research.

Furthermore, several market participants argue that providers price research below costs. If the actual costs incurred to produce research do not match the price at which the research is sold, it may have a negative impact on the research ecosystem. Some argue that pricing of research should be subject to the rules on reasonable commercial basis.

Finally, several market participants also pointed out that rules on free trial periods of research services are not sufficiently clear ([ESMA also drafted a Q&A on trial periods](#)).

### Question 59. How would you value the proposals listed below in order to increase the production of SME research?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Introduce a specific definition of research in MiFID II level 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Prevent underpricing in research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**Please specify what other proposals you would have in order to increase the production of SME research:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Focus regulatory attention on competition forces and ensure large financial conglomerates are not engaging in dumping of research, which prevents price formation from occurring and therefore viable business models to emerge in independent research.

We also want to underline the suggestions proposed (with the simultaneous acceptance of sponsored research) by members from CFA Society France to address the dramatic drop in SMEs research:

- considering it as a minor non-monetary benefit;
- accept subsidised funding by the coverage recipient, coverage namely the issuer, which is nevertheless subject to;
- the intercession of an independent entity to allocate and control the research produced, in order to neutralise the suspicion of a conflict of interest.

However, members in the UK disagree on the point that banks are per se dumping research as they have been asked/forced to cut the costs of their research by the AM clients who in turn have decided to pay for this research with their own P&L and not pass on the costs to the end investor client. Our UK members argue that price dumping by competitors is not the main reason why independent research providers lose out on business from large asset managers.

A bigger problem than competitor behaviour is the way large asset managers have set up their research purchasing efforts. It is bound to result in the purchase of research that is ultimately inadequate to support the fund management process across the organization and is therefore detrimental to the end investor, implying that the regulator should look at this from the point of view of investor protection and not just from the point of view of having a competitive research market. It is also particularly damaging to SME research. Large AM firms tend not to give each fund manager and buy-side analyst a research budget to spend as they see fit (although this would be hugely beneficial in terms of matching up supply and demand, as excellent fintech platforms are available where an individual fund manager could, e.g. buy the best research on a particular SME that he has in his portfolio, but that is not of interest to anyone else in his organization). But AM firms don't do this. Instead, they have bureaucrats in charge of the vendor management process, and these bureaucrats can't be bothered to manage a large number of vendor relationships (partly due to the fact that vendor onboarding at AM firms is insanely complicated, possibly due to excess complexity related to MiFID II). Therefore, the bureaucrats poll all the fund managers in the organization on what research they need, and the research that gets the most votes gets purchased. This skews the provider selection process to the large banks and also incentivizes "lowest-common-denominatorism": the bank that can cover zillions of stocks globally will get the popular vote, whereas providers of in-depth research in just one sector or with a smaller coverage universe will only cater to a small number of fund managers at any one AM firm. This also means that the research needs of SME fund managers are not taken into account.



**Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes. For any market to function properly, price formation needs to take place when the forces of supply and demand are least tempered with. In the case of the market for research, the issue has been that historically no party paid attention to its cost given it was blended into overall trading costs. Now that a separation has been established, the market is struggling to find its balance and determine how research pricing should take place. Maybe it is the responsibility of asset managers to pay the price for research that corresponds to the demonstrable value add for the research they decide to pay for. Most importantly, large financial conglomerates should not be authorised to undercut independent research firms by charging below—cost prices for their research and regulators should take great care in controlling this aspect. As underlined in the response to question n. 59, our members from CFA Society UK do not agree on the notion that banks are cutting research cost prices.

## **1.2. Alternative ways of financing SMEs research**

Alternative ways of financing research could help foster more SME research coverage. Operators of regulated markets and SME growth markets could be encouraged to set up programs to finance research on SMEs whose financial instruments are admitted on their markets. Another option would be to fund, at least partially, SME research with public money.

**Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 60.1 Please explain your answer to question 60:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**Question 61. If SME research were to be subsidised through a partially public funding program, can you please specify which market players (providers, SMEs, etc.) should benefit from such funding, under which form, and which criteria and conditions should apply to this program:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Funded research could seem like an interesting idea. Yet, there is a risk it will lead to funding only going to constituents of most liquid market indices or ETFs, as operators of markets remain commercial enterprises. As long as we remain cognizant of these limitations, why not.

ESMA could be the responsible authority in charge of this program management. However, ESMA should be empowered of greater supervisory and EU investor protection powers. This is even more necessary if the EU wants to create a real Capital Markets Union (please also see our response in the 'Additional comments' section).

Our societies have different viewpoints on this proposal. Our Italian members believes that a public funding program should subsidise research providers, and that this scheme could involve the provision of proportional cash amounts to the number of reports that have been published on SMEs every year.

Members from CFA Society France and CFA Society UK are, instead, sceptical on the possible functioning and governance of such a program. In particular, some of our UK members raises some questions about the workability of this scheme:

- who ensures quality control and how would they ensure public value for money?;
- what if the issuer disagrees with the research report's conclusion(s) and what if the issuer sponsors the research (directly or indirectly)?;
- does the research limit itself to fundamentals or also recommend individual securities at a given price and if so do these recommendations need to be constantly updated on a timely basis as (i) market prices fluctuate and (ii) the companies update the market?;
- what happens if the research recommends securities at prices which reflect market quotes, but not where the securities can actually be traded?;
- how do you price (or to what extent do you subsidise) the research when it will invariably appear in different formats/lengths/detail and be of varying quality?;
- is the analyst also available for investor calls and meetings and how does the analyst determine how they allocate their time between different investors?;
- how does the provider of the database ensure continual coverage and for the reality that analysts will cease to continue to publish research due to personal circumstances at certain times?.

The growing use of artificial intelligence and machine learning in financial services can help to foster the production of research on SMEs. In particular, algorithms can automate collection of publically available data and deliver it in a format that meets the analysts' needs. This can make equity research, including on SMEs, less costly and more relevant.

**Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 62.1 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No comments.

**1.3. Promote access to research on SMEs and increase quality of research**

The lack of access to SME research deprives issuers from visibility and financing opportunities. However, access to SME research can be improved by creating a EU-wide SME research database.

The creation of an EU database compiling research on SMEs would ensure the widest possible access to research material. Via this public EU-wide database, anyone could access and download research on SMEs for free. Such a tool would allow investors to access research in a more efficient manner and at a lower cost, while improving SMEs visibility.

**Question 63. Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 64. Do you agree that ESMA would be well placed to develop such a database?**

- 1 - Disagree

- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 64.1 Please explain your answer to question 64:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As for everything, this is a question of balancing ambitions with resources. Such a database administered by ESMA could facilitate the circulation of information and ESMA appears to be best positioned within the circuit of ESAs to do the job, given it is already the focal point of regulatory reporting, AIFMD data. Natural questions will arise, such as: the sourcing of this data and whether it is private information; the quality of this information will need to be assessed, by whom; this will not however change the fact that asset management firms will in turn use this information internally to continue to generate proprietary information upon which their business proposition is based.

However, our Dutch member, who is a MD in a fund management boutique highlights that this would be a commercial activity, and therefore the development of such a database should be left to the market.

Where issuer-sponsored research meets the conditions of Article 12 of Delegated Directive (EU) 2017/593, it can qualify as an acceptable minor non-monetary benefit. One condition is that the relationship between the third party firm and the issuer is clearly disclosed and that the information is made available at the same time to any investment firm wishing to receive it or to the general public. However, issuers and providers of investment research consider that the conditions listed under Article 12 would in most cases not apply to issuer-sponsored research. As a result, issuer-sponsored research would not qualify as acceptable minor non-monetary benefit.

**Question 65. In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 65.1 Please explain your answer to question 65:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The point of the inducement and unbundling rules were to limit the potential for conflicts of interest to alter the quality and the suitability of an investment advice or portfolio management decision. From this point of view, issuer-sponsored research is by definition publicly available as this is precisely the point for an issuer; i. e. ensure widespread distribution of pertinent information on its account. The problem will however be the same as for credit ratings; regulators will need to ensure that processes and principles are in place (ref.

IOSCO principles) to control for the quality of this research and honest point of view. Disclosure will also be necessary.

Similarly, to the disclosure for op-eds that are clearly paid by firms, issuer-sponsored research needs to indicate clear warning, and authorities should monitor efficiently. Investors should have a clear understanding when research is paid by the issuer.

Some of our French members advocate that the issuer-sponsored research must be considered as "acceptable non-monetary benefit" in order to make sponsored research available free of charge to any investor. If this does not qualify as above, firms could only have access to this research by including in their contract with the research departments or other firms providing research. The consequence of this situation could be a severe reduction in dissemination of research.

### **Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

#### **Question 66.1 Please explain your answer to question 66:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This question should be analysed from the point of view of the inducement notion and the potential for conflict to alter the judgment of the decision maker against the interest of the end-client. Issuer-sponsored research is paid for by the issuer and is therefore meant to be as public and widely disseminated as possible. The consumer of this research does not have to pay for this research and so there is no risk that a conflict could be established with a brokerage house or a trading counterparty.

In addition, Article 37 of Delegated Regulation (EU) 2017/565 provides rules on conflict of interests for investment research and marketing communication. Investment research is defined in Article 36 of delegated regulation 2017/565. However, issuers and providers of investment research consider that the definition of Article 36 would in most cases not apply to issuer-sponsored research which as a result, would not qualify as investment research. As a consequence, the rules on conflict of interests applicable to marketing documentation would apply to issuer-sponsored research.

### **Question 67. Do you consider that rules applicable to issuer-sponsored research should be amended?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

## Question 67.1 Please explain your answer to question 67:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

However, members from CFA Society UK feel that amendments should be envisaged in order to restrict issuer-sponsored research only to professional and semi-professional/high-net worth investors. Issuer-sponsored research is very harmful in a research market that is already plagued by myriad anti-competitive forces and demand failure. As soon as “free” issuer-sponsored research on a stock becomes available to an asset manager, it makes it very hard for a fund manager to justify internally why his organization needs to spend money on regular priced research on the same name by another broker, who does not get paid by the issuer. A genuine provider who writes a high quality, objective piece of research on a stock sees the potential client base for this research greatly reduced, if not evaporated, whenever “free” issuer-sponsored research is made available. This tilts the economic equation for writing a piece of research from borderline positive to squarely negative. Consequently, issuer-sponsored research drives genuine providers out of the market place.

Another area of concern for our members in UK is that regulators appear to impose business models on research providers. Providers are allowed to blast their research out to the whole world for free (and are even required to do so, which further tips the scales in favor of those with great distribution channels rather than great research capabilities) if they take money from the issuer. They suggest that regulators should either a) take the view that asset managers need to pay for all of the research they consume, on the grounds that this is the only way to ensure the existence of a vibrant research market that will benefit the end investors, or b) they should allow any business model that is not in violation of inducement rules.

**Question 68. Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?**

	1 (least effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (most effective)	N. A.
Introduce a specific definition of research in MiFID level 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Authorise bundling for SME research exclusively	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017/593	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Prevent underpricing of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amend rules on free trial periods of research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Create a program to finance SME research set up by market operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Fund SME research partially with public money	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promote research on SME produced by artificial intelligence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Create an EU-wide database on SME research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amend rules on issuer-sponsored research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

## Please specify which other policy option would be most needed and have most impact to foster SME research:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Ensure competition rules work efficiently and large financial conglomerates are not abusing their position to dump their research, therefore preventing a healthy research market from forming.  
As mentioned in the response to question. 59, members from CFA Society UK disagree on this view.

## Question 68.1 Please explain your answer to question 68:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that tiering the market (whether to advantage small asset management firms or small independent research firms) would help. It could create additional burden and administrative complexity for producers and consumers of research. Also, on SME research, it would be difficult to keep track of what is an SME and what is not, given the complexity of definitions and cross-EU transpository difficulties. Competition and research pricing however are a real problem. Regulators could think of rules to monitor and control that the market for research operates effectively, that price formation works as intended and that large groups are not undercutting small independent research providers. Asset managers have a degree of responsibility here, in ensuring that the value add they obtain from research is reflected in the price they pay for it. There is a dichotomy here as it is in asset managers' interest and their clients' to pay the least, yet if pricing is distorted by large groups, it means the market is not operating and the invisible hand of Adam Smith is failing to create a balanced market. Absent sound market forces, innovation will be stifled and operators will lose faith in the system, which will even more so act as an impediment on anyone wishing to create independent research.

The issue is issuer-sponsored research warrants further investigation. The argument could be that it represents marketing rather than research, yet it will still be used as part of the investment decision making process. Hence, the inherent conflict also needs to be considered by regulators and sound principles (disclosure, limitations) need to be established, just as for credit ratings.

The funding of research by public money could sound interesting, yet the mutualization of any effort always creates unintended consequences and comes at the expense of other forms of spending. Why would tax payers agree to fund such spending which is not going to benefit society at large in a very clear manner? The technical mechanism will need thorough investigation if this is going to be considered.

## IV. Commodity markets<sup>8</sup>

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As part of the effort to foster more **commodity derivatives trading denominated in euros**, rules on pre-trade transparency and on position limits could be recalibrated (to establish for instance higher levels of open interest before the limit is triggered) to facilitate nascent euro-denominated commodity derivatives contracts. For example, Level 1 could contain a specific requirement that a nascent market must benefit from more relaxed (higher) limits before a



position has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its [Staff Working Document on strengthening the International Role of the Euro](#) that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

The most significant topic seems the current position limit regime for illiquid and nascent commodity markets. The position limit regime is thought to work well for liquid markets. However, illiquid and nascent markets are not sufficiently accommodated. ESMA also questioned whether there should be a position limit exemption for financial counterparties under mandatory liquidity provision obligations. ESMA would also like to foster convergence in the implementation of position management controls.

Another aspect mentioned in the Commission consultation on the international role of the euro is a more finely calibrated system of pre-trade transparency applicable to commodity derivatives. Such a system would lead to a swifter transition of these markets from the currently prevalent OTC trading to electronic platforms.

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<sup>8</sup> The review clause in Article 90 paragraph (1)(f) of MiFID II is covered by this section.

**Question 69. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the improvement of the	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

functioning and transparency of commodity markets and address excessive commodity price volatility.						
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 69.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.**

**Quantitative elements for question 69.1:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 69.1:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### 1. Position limits for illiquid and nascent commodity markets

The lack of flexibility of the **position limit** framework for commodity hedging contracts (notably for new contracts covering natural gas and oil) is a constraint on the emergence euro-denominated commodity markets that allow hedging the increasing risk resulting from climate change. The current de minimis threshold of 2,500 lots for those contracts with a total combined open interest not exceeding 10,000 lots, is seen as too restrictive especially when the open interest in such contracts approaches the threshold of 10,000 lots.

#### Question 70. Can you provide examples of the materiality of the above mentioned problem?

- Yes, I can provide 1 or more example(s)
- No, I cannot provide any example

#### Question 71. Please indicate the scope you consider most appropriate for the position limit regime:

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N. A.
Current scope	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A designated list of 'critical' contracts similar to the US regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

#### Question 71.1 Please explain your answer to question 71:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 72. If you believe there is a need to change the scope along a designated list of ‘critical’ contracts similar to the US regime, please specify which of the following criteria could be used.**

**For each of these criteria, please specify the appropriate threshold and how many contracts would be designated ‘critical’.**

- Open interest
- Type and variety of participants
- Other criterion:
- There is no need to change the scope

**Question 72.1 Please explain your answer to question 72:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has questioned stakeholders on the actual impact of position management controls. Stakeholder views expressed to the ESMA consultation appear diverse, if not diverging. This may reflect significant dissimilarities in the way position management systems are understood and executed by trading venues. This suggests that further clarification on the roles and responsibilities by trading venues is needed.

**Question 73. Do you agree that there is a need to foster convergence in how position management controls are implemented?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 73.1 Please explain your answer to question 73:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Question 74. For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations?**

**This exemption would mirror the exclusion of the related transactions from the ancillary activity test.**

	Yes	No	N.A.
Nascent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illiquid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 74.1 Please explain your answer to question 74:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Question 75. For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?**

	Yes	No	N. A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 75.1 Please explain your answer to question 75:**

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## 2. Pre-trade transparency

MiFIR RTS 2 ([Commission Delegated Regulation \(EU\) No 2017/583](#)) sets out the large-in-scale (LIS) levels are based on notional values. In order to translate the notional value into a block threshold, exchanges have to convert the notional value to lots by dividing it by the price of a futures or options contract in a certain historical period.

Some stakeholders argue that the current provisions of RTS2 lead to low LIS thresholds for highly liquid instruments and high LIS thresholds for illiquid contracts. This situation makes it allegedly hard for trading venues to accommodate markets with significant price volatility. This hinders their potential to offer niche instruments or develop new and/or fast moving markets.

### **Question 76. Do you consider that pre-trade transparency for commodity derivatives functions well?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

## **PART TWO: AREAS IDENTIFIED AS NON-PRIORITY FOR THE REVIEW**

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This section seeks to gather evidence from market participants on areas for which the Commission does not identify at this stage any need to review the legislation currently in place. Therefore, PART TWO does not contain policy options. However, should sufficient evidence demonstrate the need to introduce certain adjustments, the Commission may decide to put forward proposals also on the topics listed below. As in the first section, certain questions are directly linked to the review clauses in MiFID II/MiFIR while others are questions raised independently of the mandatory review clause.

## **V. Derivatives Trading Obligation<sup>9</sup>**

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Based on the G20 commitment, MiFIR article 28 introduced the move of trading in standardised OTC derivative contracts to be traded on exchanges or electronic trading platforms. The trading obligation established for those derivatives (DTO) should allow for efficient competition between eligible trading venues. ESMA has determined two classes of derivatives (IRS and CDS) subject to the DTO. These classes are a subset of the EMIR clearing obligation.

The Commission invites market participants to share any issues relevant with regard to the functioning of the DTO regime, the scope of the obligation and the access to the relevant trading venues for DTO products.

<sup>9</sup> The review clause in Article 52 paragraph (6) of MiFIR is covered by this section.

**Question 77. To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DTO has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 77.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.**



**Quantitative elements for question 77.1:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 77.1:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### **Question 78. Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### **Question 79. Do you agree that the current scope of the DTO is appropriate?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### **Question 79.1 Please explain your answer to question 79:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. ESMA consulted in Q4 2019 on the need for an adjustment of MiFIR, receiving broad support for such an amendment and [ESMA published their report on 7 February 2020](#).

**Question 80. Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 80.1 Please explain your answer to question 80:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## VI. Multilateral systems

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According to MiFID II/MiFIR, a 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients' relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system. However, according to traditional trading venues, this alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MiFID II/MiFIR provisions. There is a debate whether MiFID II/MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

**Question 81. Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?**

- 1 - Disagree
- 2 - Rather not agree
-

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

## VII. Double Volume Cap<sup>10</sup>

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in share trading.

<sup>10</sup> The review clauses in Article 52 paragraphs (1), (2) and (3) of MiFIR are covered by this section.

**Question 82. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?**

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 82.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.**

**Quantitative elements for question 82.1:**

	<b>Estimate (in €)</b>
Benefits	
Costs	

## Qualitative elements for question 82.1:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## VIII. Non-discriminatory access<sup>11</sup>

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MiFIR introduces an open access regime to trade and clear financial instruments on a non-discriminatory and transparent basis. The key purpose of MiFIR open access provisions is to facilitate competition among trading venues and central counterparties and prevent any discriminatory treatments. It aims at creating more choice for investors, lowering costs for trade execution, clearing margins and data fees. Open access might therefore bring opportunities for new entrants in the market to compete with traditional providers. Furthermore, it could potentially help fostering financial innovation, developing alternative business models which could allow cost efficiency gains in trading and clearing operational processes compared to the current situation.

MiFIR open access provisions provide safeguards to preserve financial stability without adversely affecting systemic risk. The relevant competent authority of a trading venue or a central counterparty shall grant open access requests only under specific conditions, notably that open access would not threaten the smooth and orderly functioning of the markets. MiFIR open access rules also added multiple temporary transitions periods and opt-outs (Article 35 and 36 of MiFIR) for an exemption from the application of access rights, with the majority of opt-outs ending on 3 July 2020.

The Commission will have to submit to the European Parliament and to the Council reports on the application and impact of certain open access provisions. With this in mind, the Commission would like to gather feedback from market stakeholders which could be useful for the preparation of the reports.

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<sup>11</sup> The review clauses Article 52 paragraphs (9), (10) and (11) of MiFIR are covered by this section.

### **Question 83. Do you see any particular operational or technical issues in applying open access requirements which should be addressed?**

- Yes
- No
- Don't know / no opinion / not relevant

### **Question 84. Do you think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree

Don't know / no opinion / not relevant

**Question 85. Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures?**

**Please explain your reasoning and specify which countries:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## IX. Digitalisation and new technologies

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Technology neutrality is one of the guiding principles of the Commission's policies and one of the key objectives of the [Commission's Fintech Action Plan](#). A technology-neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address obstacles or identify gaps in existing EU laws which could prevent the take-up of financial innovation or leave certain of the risks brought by these innovations unaddressed.

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergence of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published [two public consultations focusing on crypto assets and operational resilience in the financial sector](#), and may consult later this year on further topics in the context of the future Digital Finance strategy.

In that context, and to avoid overlapping, this consultation will only focus on targeted aspects, which are not covered by these horizontal consultations. The Commission will of course take into consideration any relevant input received in the horizontal consultations in its future policy work on the MiFID II/MiFIR framework.

**Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?**

**Please explain your answer:**



*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that new technologies will have a positive impact especially on costs, access to advice, and product choice. Investors would have easier access to information on their investments. Crowdfunding and peer-to-peer lending would facilitate SMEs access to capital markets. Technology is also expected to help investment firms get across clients and better deliver client experience

Our Italian members feel that the main developments are expected in the field of payments, in SMEs funding and in reducing information asymmetry for investors and consumers. Contactless payments during the coronavirus pandemic have proved to be crucial for households and local groceries in providing essential services with no need to go at the bank. Crowdfunding is gaining more and more strength allowing SMEs to growth, disintermediating the financial system. For retail investors, significant progress can be achieved through more transparency using data driven solution for more complete information, more comparability and more accessibility for investment products.

**Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support the existing approach. Technology is evolving too quickly, and regulations cannot take into account every technological change. Hence, the Fintech regulatory approach should be balanced in terms of technology efficiency and investor protection.

Our Italian members agree on the fact that the principle of technology neutrality has to be preserved. However, they remark that new risks might emerge from the development of new technologies. The implementation of the neutrality may have some obstacles due to the lack of technical knowledge among market participants.

The main obstacle is the legal framework that does not consider the virtual reality in terms of contracts, ownership, rights, signatures, etc. Dedicated regulation is necessary, but this should take into account the technological issues that may arise from a traditional legal framework and the peculiarity of the tech experience for users. Regulators should identify new functionalities that require distinct regulations dialoguing with expert and industry operators to assure a common understanding of activities and business models for the implementation of new measures.

**Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading)?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We expect the Distributed-Ledger Technology (DLT) to bring most benefits in reducing costs and time of capital increases, and improve post-trade clearing and settlement.

**Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years time)?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 89.1 Please explain your answer to question 89:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our members from CFA Society Italy feel that applications of distributed ledger technologies have a strong potential to transform trading venues. One of the most significant developments is the liquidity enhancement of products that are not covered by traditional venues. Another is the post trading: eliminating inefficiencies, especially in reconciliations, custody chains. In addition, the risks and the required margins would be better controlled. DLT would also improve the visibility of the entire trading system. New business models may also arise for primary dealers, trading venues are likely to be entitled of new activities, using their ability to link the trades to the DLT platform.

The online environment puts a strong focus on providing products to customers as fast as possible, with as few barriers as possible. As far as financial services are concerned, this might endanger retail clients if they do not take enough time to reflect on purchasing complex financial products. On the other hand, making the product quick and easy to purchase (e.g. speedy or 'one-click' products) makes it easier for clients to buy and sell at least simple investment products online. Taking all of the above into consideration, the Commission would like to gather feedback on whether certain rules in the MiFID II/MiFIR framework on marketing and provision of information to clients should be adjusted to better suit the provision of services online.

**Question 90. Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?**

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree

- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 90.1 Please explain your answer to question 90:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our Italian members believe that the MIFID II/MiFIR framework should be adapted to capitalise the digitalisation. Reporting requirement for pre-trade and post trade transparency should be more accessible through digitalisations and the DLT.

### Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

### Question 91.1 Please explain your answer to question 91:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some members from CFA Society Italy remark that EU passporting for all financial products should the way to enable innovative business to scale-up across the EU with clear and consistent licensing requirements. Financial services that do not have the fully EU passporting are equity and debt crowdfunding and peer to peer lending.

## X. Foreign exchange (FX)

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Spot FX contract are not financial instruments under MiFID II/MiFIR. Some stakeholders and competent authorities raised concerns as regards the regulatory gap and requested the Commission to analyse if policy action would be needed.

### Question 92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

**Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Section 3. Additional comments

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**You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.**

**Please, where possible, include examples and evidence.**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All in all, we would like to stress that MiFIR/MiFID II only represents a part of the whole architecture covering the financial services sector and that a proper analysis of the entire regulatory framework should be carried out.

In 2001, a special group set up by the European Commission (the Giovannini group) identified a series of barriers as regards cross-border clearing and settlement system in the EU and the efficiency of securities transactions. The main macro categories of obstacles, which are still mostly unaddressed, were:

- 1) national differences in technical requirements and market practice;
- 2) Differences in tax procedures; and
- 3) Legal certainty.

To achieve a genuine Capital Markets Union, we need to overcome these barriers, which were also detected by the CFA Institute survey on Capital Markets Union. Survey respondents highlighted that differences in taxation treatment across jurisdictions and differences in legal frameworks surrounding the ownership and transfer of securities were the main hindrances for the development of a Capital Markets Union.

Following the 2001 Giovannini report, also the European Parliament came out with an own-initiative report on the state of integration of financial markets in the EU, with Ieke van den Burg as a rapporteur. The report found a number of issues, which are still present today, such as:

- Existence of overlapping directives, which might lead to contradictory and duplicate requirements;
- Lack of a horizontal regulatory approach for asset management covering and harmonising the relevant aspects in MiFID, UCITS, Institutions of Occupational Retirement Provision and life Insurance Directives (to have a competitive single market in asset management);
- discriminatory and anti-competitive tax barriers on the cross-border supply of financial services;

The report also underlined the need to identify barriers to competition and integration of the retail banking services sector.

In particular, CFA Institute calls for direct supervisory powers for ESMA in the context of cross-border investments. Direct supervision at EU level would reduce obstacles in fund distribution that are due to different requirements and inconsistencies regulated at national level.

**Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?**

**Please explain your answer:**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## Useful links

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