

EFAMA RESPONSE TO THE EUROPEAN COMMISSION'S CONSULTATION ON THE REVIEW OF THE MIFID II/MIFIR REGULATORY FRAMEWORK

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SECTION 1. GENERAL QUESTIONS ON THE OVERALL FUNCTIONING OF THE REGULATORY FRAMEWORK

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:

EFAMA has always been supportive of the overarching objectives of the MiFID II/MiFIR framework. For the most part, the framework is working as intended with provisions being appropriately calibrated. We see a need for revisions to the Level 1 texts only with regards to the issues raised around 'semi-professional' investors and opt-outs for professional investors for certain requirements. In all other instances (and in particular for disclosures), we believe that much-needed flexibility can be achieved by making targeted revisions to the Level 2 framework and ESMA Q&As. We provide concrete suggestions in our responses to the specific questions.

Implementation of MiFID II and MiFIR represented a major challenge for the financial industry as a whole and for regulators. In particular, the publication of the Level 2 measures was delayed, resulting in less time for implementation, which significantly increased complexity and cost.

Furthermore, ESMA continuously updated its Level 3 Q&As. Some Q&As (e.g. on investor protection issues) were published only in December 2017 and expected to be implemented a few days later.

In general, ESMA's current approach in the form of continuously updated Q&As is burdensome for the wider financial industry. Each new clarification can lead to necessary changes to underlying systems and be time- and resource-intensive. We would therefore strongly suggest making thematic Q&A updates every year, with enough time for the industry to implement these changes. The timing of such impending updates could also be announced in advance and would allow the involved parties to plan for these changes, thus cost-effectively adapting their systems in time.

Moreover, in accordance with the principles of good regulation and with the revised powers of the ESAs, the industry and other impacted stakeholders should be able to comment on the proposed answers to questions, before the answers are published as final. It is noted that the drafting of some Q&As is not clear or are worded in such a way that they are understandable in relation to a certain sector or product but not for others.

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

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

While the MiFID II/MiFIR framework is mostly working as intended, we believe that more can be done to encourage retail participation in the EU capital markets.

MiFID II has increased the “red tape” for investors (and disclosures in the PRIIP KID are not aligned). In some instances, fearing potential litigations, investors are being directed into low-risk asset classes to ensure no misselling claims, but this could be to the detriment of long-term needs and investment returns. Overall, these measures, therefore, act as a barrier rather than an enabler. As a result, money is left in bank deposits rather than being invested prudently for the long-term.

Another area of improvement relates to data quality and data costs. MiFID II still miss to deliver a consolidated tape and the notion of “Reasonable Commercial Basis” in data cost has been largely overlooked.

That being said, in almost all instances these negative implications can be corrected by a more flexible interpretation of the Level 1 framework by targeted amendments to the Implementing Directive and Regulations as well as to ESMA’s guidelines and Q&As. We provide concrete suggestions in our answers to the specific questions below.

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:

We note an impact on data cost where the insufficient coordination allows for undue increase in data cost and insufficient transparency in the application of the principle of "Reasonable Commercial Basis".

According to a recent Cossiom survey¹, over 80% of market data users have experienced substantial cost increases in the last two years. This finding is corroborated by ESMA according to whom "overall market data prices increased, in particular for data for which there is high demand"².

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:

We consider that the transparency, for pre- and post-trading, has improved and could be further improved.

However, we caution the Commission to keep in mind that transparency is not necessarily the only – nor the most important- factor to be taken into account in view of offering the best outcome for end investors (other criteria such as quality of the execution, cost or liquidity also play a significant role).

For the sake of transparency, MiFID II has forgotten to consider the role of institutional investors investing on behalf of end investors and that allows for economies of scale.

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:

¹ [Cossiom's 2019 market data exchange fees survey of buy- and sell-side institutions](#)

² [MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, pp. 37-38.](#)

From our perspective, MiFID II's implementation has further opened the market for new liquidity providers and new methods of trading beside the "historical ones" and has defined the different avenues to execute transactions.

All types of venues and market participants, including Systematic Internalisers, should be subject to rules that:

- Are coordinated but not necessarily identical,
- Foster market access and market competition, and
- Offer the largest range of product offering to facilitate market liquidity, regardless of the size of the orders.

We believe that a variety of types of execution, e.g. trading venues, periodic auctions and systematic internalisers' organisation should best serve the interest of the industry to maintain flexibility in innovation and different options when trading.

We would also encourage the Commission to keep in mind the economic features that differentiate categories of venues before assessing if a level playing field has been achieved in the implementation of MiFID II.

On one hand and over the years, the legislation (starting by MiFID I) imposed an increased competition between exchanges and other types of venues. Therefore, we consider that the first comparison should be between types of venues (Exchanges, RM, MTF or OTF), rather than with SIs.

We also note that the exchanges have sought to diversify their sources of revenues, including by further monetizing their market data. Nowadays, major stock exchange groups derive most of their revenues from sources other than trading activities, and that SI may not access. Therefore, we consider that the level playing field should consider the origin of the revenues to define the "playing field".

Lastly, exchanges are only covering a limited list of assets, as opposed to SI for which the coverage requirements are more stringent.

On the other hand, Systematic Internalisers ("SIs") play a role in providing liquidity and price improvement within this ecosystem and function as a 'shock absorber' for end-users by limiting price impacts of buy-side positions.

There is no evidence to indicate that SIs have had any negative impact on liquidity or price discovery. As sources of liquidity, they add much needed diversity and competition which only stands to benefit investors. Should SI activity be restricted in any way, the only beneficiaries would be primary markets which risks further reducing competition in European 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 If you have identified such barriers, please explain what they would be:

In line with our responses to Questions 2.1 and 3.1, we see “red tape” and additional national requirements (i.e. gold-plating) as barriers to distributing financial instruments throughout the EU. This results in an increased number of funds and share classes that are created to suit specific national requirements. In consequence, this decreases the number of products that are accessible to (in particular retail) investors. Specific examples of differences in EU Member States include:

- Different national interpretations of ‘complex’ financial instruments including stricter interpretation of non-complex products than set out in Article 57 of the Delegated Regulation.
- Specific national rules on performance fees
- The obligation to advise on the cheapest share class

Another barrier is a technology barrier: for smaller brokers and investment firms, there is an enhanced need for capital to make sophisticated tools run to analyse data in the best way.

In addition, for Small Caps, the notion of reference price is not necessarily meaningful.

Lastly, we consider that the absence of enforcement of the “reasonable commercial costs” principle constitute a barrier to transparency as the cost of data may lead some market participants to refrain from seeking quotes for some instruments.

SECTION 2. SPECIFIC QUESTIONS ON THE EXISTING REGULATORY FRAMEWORK

PART ONE: PRIORITY AREAS FOR REVIEW

I. The Establishment of an EU consolidated tape³

1. Current state of play

1.1. Reasons why a consolidated tape has not emerged

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overly strict regulatory requirements for providing a CT	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Competition by non-regulated entities such as data vendors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of sufficient data quality, in particular for OTC transactions and	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

³ 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

transactions on systematic internalisers.						
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 7.1 Please explain your answers to question 7:

The main reasons we see for the fact that an EU consolidated tape has not yet emerged are the following:

- data costs, as the increase in data cost reduced the willingness or the capability to invest in infrastructures,
- the opposition of data vendors to the setting-up of a CT,
- the absence of actual incentives to set up a harmonised CT.

Despite not being the ultimate remedy to all transparency issues, we insist on the need to implement a well thought-through consolidated tape.

We would also add that the lack of strict enforcement of the rules related to the access to and the payment of data is detrimental to the creation of a CT. We consider that the absence of enforcement of the “reasonable commercial costs” principle constitutes a barrier to transparency, as the cost of data may lead some market participants to refrain from seeking quotes for some instruments.

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:

We do not see a need to create a dedicated framework for consolidated tape. We consider that the strict enforcement by ESMA and NCAs of the existing rules related to the access to and the payment of data and the creation of a CT should first take place before reviewing its framework.

Should the Commission consider it necessary to organise differently a consolidated tape based on the current framework, we consider that this framework should be:

- organised at level 1 to ensure full political support,
- compliant with the requirements laid down in MiFID Article 65, and
- the exclusive responsibility of ESMA and not of the Member States.

1.2. Availability and price of market data

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns? Please explain your answer:

EFAMA is pleased to see that ESMA and the Commission acknowledge the importance of addressing this issue.

We support the idea of moving to the Level 1 text the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567).

In addition, we would like to emphasise the importance of level 4 measures to ensure the proper, effective, and harmonised application of all legislative provisions related to market data.

To that effect, we urge the Commission and the ESAs to make use of their enforcement powers, to make sure that Member States and their relevant National Competent Authorities (NCAs) fully apply all the existing and future provisions of MiFID.

Based on ESMA's annual enforcement reports, the Commission should take appropriate legal and political actions vis-à-vis Member States to enforce the consistent application of the MiFID rulebook through the territory of the EU.

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="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ensuring best execution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Documenting best execution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Better control of order & execution management	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory reporting requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Market surveillance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liquidity risk management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Making market data accessible at a reasonable cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Identify available liquidity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Portfolio valuation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

A CT would also be useful for price formation purposes, as post-trade data are the first element to pre-trade analysis.

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

To date, the requirement imposed on exchanges and trading venues to provide post-trade data on a "reasonable commercial basis" has been largely ignored.

Properly enforced, this requirement could lead to buy-side market participants benefitting from better market data license terms & conditions as well as improved cost transparency and eventually fairer pricing. Giving access to a unique source of data would reduce reporting errors, avoid duplication of data feeds, and provide the necessary transparency.

EFAMA is supportive of a voluntary use based consolidated tape to the extent that it is properly constructed and governed. In that perspective, we would favour a CT operated by ESMA, using an infrastructure that would be developed by an external provider selected via a tender. We would expect that the first step to CTP implementation is controlling the cost and access to market data. In this respect,

we support the principle of sharing the cost of the tape among sell-side, buy-side and vendors (see [EFAMA's position on CTP](#)).

A second updated post trade equity CTP helps on a low-cost basis (revenue sharing model - no market data fees for data sources) for trade preparation, market analysis and research, valuations, best-execution, compliance and client reporting. Also, we do not see the need for delayed data anymore.

Additionally, a second updated fixed income CTP covering all venues and all counterparties with more timely disclosure of large trades has the same use case as above plus effectively having a quasi-pre-trade CTP for RFQ based FI trades.

However, EFAMA cautions that it could actually worsen the market data problems considerably if the Consolidated Tape Providers' (CTP) governance and operations requirements are not calibrated adequately, as data consumers would use inadequate CTP data and therefore may be forced to continue to use the other market data sources as well. In addition, European authorities should keep in mind that a Consolidated Tape (CT) as such would not solve the market data's market failure – as is obvious when looking at the current problems and shortfalls in the US⁴.

We would therefore suggest the Commission to:

- Increase supervision by ESMA/NCA's in the EU and encourage IOSCO to take a leading role to similarly strengthen supervision at worldwide level,
- Impose a cost-based licensing mechanism,
- Impose transparency on costs,
- Impose best practices on high impact data licenses.

2. General features of the consolidated tape

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mandatory contributions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mandatory consumption	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Full coverage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Very high coverage (not lower than 90% of the market)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Real-time (minimum standards on latency)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁴ The US consolidated tape (see [SEC definition](#)) reports only the latest price and volume data on sales of exchange-listed stocks. Perceived issues are complex and decades-old structure (e.g. equities are reported in the SIP, in TRACE for corporate bonds, EMMA for municipal bonds, and the DTCC DDR for OTC derivatives) that do not match with direct exchange feeds. In an effort to ensure that those using the tapes are not at a competitive disadvantage, the SEC has open a [consultation](#) to assess the access to the exchanges' premium proprietary data feeds.

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

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?

We see the very high coverage (above 90%) as well as real-time as two critical elements for the creation of a successful EU consolidated tape.

Regarding the financing of the CT, we consider that it should be mutualised.

Lastly, we urge the Commission to mandate the use of ISO 20022 and ISO 6166 communication for all financial instruments.

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):

We consider that the enforcement of a consolidated tape for all financial instruments is a key component to bring transparency in markets, as:

- post-trade data is the first level of pre-trade and price determination information,
- a CT constitutes a “unique centralised data source”.

From our perspective, a successful CT should be implemented very carefully and be phased-in as follows:

- Phase 1, focusing first on post-trade information
 - o covering all asset classes
 - o streamlined through
 - The use of ISIN codes
 - ISO 20022
 - o based on existing reporting (MiFID II, SFTR, EMIR Refit)
 - o using existing infrastructures (CCPs, exchanges and venues)
 - o managed and operated by ESMA
 - o with a tender on the IT development and the data management process.
- Phase 2, adding pre-trade data disclosed,
- Conditional upon the positive outcome of phase 2, phase 3 could entail pre-trade data on a real time basis (on the assumption that latency and costs issues have been positively dealt with and that phases 1 and 2 are fully developed with smooth functioning).

Giving access to a unique source of data would reduce reporting errors, avoid duplication of data feeds, and provide the necessary transparency.

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:

As demonstrated in ESMA's report⁵, data vendors have significantly increased the cost of market data in the knowledge that regulated firms will have to pay for said data in order to meet their regulatory obligations (e.g. best execution). Such regulatory obligations, while intended to benefit investors, have allowed data vendors to increase their service costs (in some cases without merit) which ultimately leads to increased costs for investors.

As such, we do not support mandatory consumption of the CT.

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):

As outlined in our response to Q12, we do not believe it to be beneficial to explicitly link consumption of the EU CT to regulatory obligations such as best execution.

Taking a post-trade CT as an example, the utility of the CT would be exhibited in more accurate assessments of execution quality and in enabling end-clients to more easily verify whether best execution has been satisfied by providing an impartial and reliable picture of trading patterns, volumes and pricing.

What is crucial is that the CT should provide for appropriate information on volumes and data, to make sure that TCAs are meaningful.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fees should be differentiated according to type of use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Revenue should be redistributed among contributing venues	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The position of CTP should be put up for tender every 5-7 years	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

⁵ MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, pt. 37-38.
https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf

methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

Exchanges, other trading venues and data vendors have been using the mandatory regulatory reporting requirements as an opportunity to increase their prices directly and/or through the “slicing and dicing” of their data licenses (see also our replies to questions 12 and 13).

In addition, some data providers are forcing the data users to acquire the information that they need in bundled packages.

Therefore, we consider that

- A post-trade CT should be offered at a low cost, if not free of charge, to ensure it is accessible to all investors.
- Mandatory consumption is not necessary for a successful CT.
- Users of the service should equally bear the cost of an EU CT.

We consider that the development and operating costs should be minimal as the structure could be using existing infrastructures (TR, exchanges, etc) and with limited payment, as developed for EMIR reporting or based on a model similar to the LEI allocation.

In considering the potential distribution of revenues, the Commission should first ensure the viability of the CT before distributing any revenues among contributors. If it is feasible that revenues can be distributed to contributing venues, then one should consider potential unintended consequences which may arise from the distribution of revenue, for example on the cost of trading on contributing venues and best execution obligations.

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 ⁶	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shares post-trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ETFs pre-trade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ETFs post-trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Corporate bonds pre- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁶ 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.

Corporate bonds post- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Government bonds pre- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Government bonds post- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interest rate swaps pre- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interest rate swaps post- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Credit default swaps pre- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit default swaps post- trade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please specify for which other asset classes you consider that an EU consolidated tape should be created?

The CT should cover all financial instruments defined in the Annex 1 of MiFID II.

We insist on the fact that Spot FX are not and should not become considered as a financial instrument (see also our reply to Section VIII of the consultation).

Question 15.1 Please explain your answers to question 15:

As explained in more details in our reply to Question 11, a successful CT should be covering all asset classes and be populated based on existing reporting (MiFID II, SFTR, EMIR Refit) and should be accessible using existing infrastructures (CCPs, exchanges and venues).

This would also allow to reduce the development costs of the CT.

The CT should be managed and operated by ESMA.

To avoid conflict of interests and to ensure fair competition, the CT would be developed based on a tender on the IT development and the data management process.

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:

As explained in our reply to question 11, we consider that pre-trade transaction reporting on a CT should be implemented in a following phase.

Should the first phase be successfully implemented, we consider that the transparency for pre-trade would improve as the quality of the post-trade data is the base ground for price forming pre-trade information.

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

Shares

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

coordinated with other regulators, especially the FCA.

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:

As outlined in our response to Q17, the Official List should consider the liquidity (or lack thereof) of some shares which would otherwise meet the definition of being included in the scope of the CT. This could take the form of a 'liquidity filter' to capture only sufficiently liquid shares.

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:

We urge the Commission to develop a framework facilitating market access and access to information, especially between the EU and the UK.

Non-EU trading venues should also be allowed to voluntarily contribute to the EU CT.

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:

As explained in more details in our reply to Question 11 and 15.1, a successful CT should be covering all asset classes and be populated based on existing reporting (MiFID II, SFTR, EMIR Refit) and should be accessible using existing infrastructures (CCPs, exchanges and venues).

ETFs have proved extremely resilient through the recent period of market volatility and additive to the overall functioning of markets. The European ETF industry has benefited from the execution transparency delivered through MiFID II by enabling market participants and sophisticated investors to see the volume of ETF trading that occurs daily.

There do remain opportunities for further strengthening of the ETF ecosystem via the appointment of a regulated Consolidated Tape Provider (CTP) who would aggregate and disseminate trade reporting to all venues and clients with limited delays, including for ETF. This reinforces the need for a consolidated tape across fixed income and equity markets.

Regarding Bonds, we agree for their inclusion in the CT, but we must keep the possibility of deferrals for block trades. This being said, we wish the periods and rules applicable to deferrals to be harmonised among Member States, which is not the case today.

Regarding Derivatives, a difference must be made between listed Derivatives and OTC Derivatives having an ISIN code (to be included in the CT), contrary to OTC Derivatives without ISIN codes yet.

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

4.1. Equity trading and price formation

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:

From a competition perspective, MiFID II allowed for the development of additional alternative venues besides exchanges and the role of brokers has been modified into SIs.

For the buy-side, it was an excellent evolution, as it led to cheaper prices and lower costs, to the ultimate benefit of our end-investors.

It is important to keep in mind that overly transparent markets may lead to higher costs (e.g. to avoid having the market moving ahead of us when we ask for quotes for large positions, we may be forced to multiply transactions, consequently increasing transaction costs), hence the need to protect the role of SIs and the need to keep exceptions in transparency regime..

Regarding the STO, we encourage the Commission to remove this obligation. We are convinced that, if they were starting from a "blank sheet", legislators would no longer impose such mechanism that is artificially creating competition barriers. Conversely, the removal of the STO would ensure a legal playing field with third countries, reduce liquidity fragmentation and unintentionally creating systemic risk.

Especially in the context of the UK's withdrawal from the EU and the UK's subsequent "onshoring" of the MiFIR Article 23 trading obligation, the overlapping scopes of the EU and UK trading obligations for shares creates an inherent and unnecessary market tension, and risks restricting cross-border capital flows and market activities, and splitting liquidity pools.

As such, we believe that, where the EU's trading obligation for shares overlaps in a significant manner with that of a third country jurisdiction, the EU should explore every avenue available to avoid competing regulatory obligations for investment firms operating cross-border, and minimise potential implications such as those outlined above.

Should the Commission insist on maintaining the STO, we urge that it:

- restricts its use exclusively to securities with a primary listing in the EU,
- guarantees a strong role for SIs, that are critical to support liquidity in markets and market innovation, and
- protects investors' interests, by maintaining the prevalence of best execution principle over STO.

Regarding the identifier to use, we deem it crucial to retain and reinforce the use of ISIN codes to identify securities. This will encourage the electronification and the mitigation of operating risk in what is currently a very manual and error prone process. It will also encourage greater transparency in the new issue allocation process.

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 answers to question 22:

Please refer to our reply to question 21.

We encourage the Commission to remove this obligation. We are convinced that, if they were starting from a "blank sheet", legislators would no longer impose such mechanism that is artificially creating competition barriers. Conversely, the removal of the STO would ensure a legal playing field with third countries, reduce liquidity fragmentation and reduce the systemic risk unintentionally created by the STO.

Should the Commission insist on maintaining the STO, please refer to our reply to Question 21.

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the STO with adjustments (please specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Repeal the STO altogether	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 23.1 Please explain your answers to question 23:

As mentioned in our replies to question 21 and 22, we support the removal of the STO, as well as the double volume cap mechanism (DVC – see our reply to question 82.1). Both requirements do not result in positive outcomes for market participants but end up creating a complex market structure in Europe to the benefit of primary exchanges only and the detriment of end-users.

Therefore, we would encourage the Commission to remove the STO, to ensure a legal playing field with other countries and to avoid fragmenting liquidity and unintentionally creating systemic risk.

Where the EU's trading obligation for shares overlaps in a significant manner with that of a third country jurisdiction, the EU should explore every avenue available to avoid competing regulatory obligations for investment firms operating cross-border, and minimise potential implications such as those outlined above.

In addition, we consider that the suppression of STO should trigger the revision of the TO in its entirety (including for DTO, at least for NFC+ and SFCs to ensure a regulatory alignment between MiFID II/MiFIR and EMIR Refit).

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SIs should no longer be eligible execution venues under the STO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 24.1 Please explain your answers to question 24:

We do not support changes to the role of the SIs. SIs play a critical positive role, from a buy-side perspective.

The analysis provided by ESMA only considers the volume of trading which takes place on SIs in comparison to alternative trading systems. While alluding to the liquidity benefits provided by SIs in the broad marketplace, ESMA does not take into account the MiFIR best execution obligations which, in our experience, are met in many situations by trading on SIs, rather than exchanges or MTFs.

It is imperative that SIs are maintained as eligible execution places especially if the STO is maintained, given that:

- SI provide critical liquidity to markets
- Asset managers need to retain access to diversified venues with different level of transparency, to guarantee the access to liquidity.
- The suggested proposal would be against competition as exchanges would have de facto monopolies

Traders inside asset management companies managing large orders on behalf of our underlying clients need to retain access to diversified venues with different level of transparency, to guarantee the access to liquidity.

From a competition viewpoint, we fear that, without SIs, primary exchanges may end up with de facto monopolies. In our opinion, the Commission and ESMA should encourage innovation and ways to make trading more efficient. We do not believe their role is to support out-dated and slow-to-react business models.

On the other hand, we also believe that SIs should enrich the CT that they execute and in the respect of the transparency rules applicable to the related class of financial instruments.

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:

Regarding derivatives, we consider that APAs did not deliver the expected transparency and data quality enhancing actors. We suggest that the Commission reviews the role of APAs or possibly to remove them, as SIs (which play a positive role, in terms of lower costs compared to APAs) tend to avoid APAs for reporting purposes.

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:

We think that there is already a level playing field between trading venues and SIs, and therefore there is no need for change.

From a competition viewpoint, we fear that, without SIs, primary exchanges may end up with de facto monopolies. In our opinion, the Commission and ESMA should encourage innovation and ways to make trading more efficient. We do not believe that it is legislation's role is to support out-dated and slow-to-react business models.

(see also our reply to Question 5.1)

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

The current discovery process in equity trading is fine, and SIs can participate in the process.

Inadequately calibrated transparency would create problems for liquidity sourcing and would generate higher costs.

To efficiently do so and to reduce costs of transactions, our members are frequently using waivers, separately or in combination with each other, since they interact to safeguard and facilitate the institutional investors' ability to efficiently implement substantial investment decisions.

MiFID waivers are the mechanisms through which execution choice is made possible. The use of MiFID waivers translate into benefits for end-investors and the "real economy":

- Increased liquidity

The possibility to use waivers brings participants into the market that would not have otherwise been there. Likewise, the removal of the waivers will not, we believe, translate to a direct shift of liquidity from "dark" to the "lit" markets. Instead it will segment client orders into those which can benefit from crossing and those that cannot.

- Lower costs

At present, a broker with two opposing institutional orders can automatically match the orders, or parts of them, at the same price. Without this possibility, the broker would be forced to incur spread costs on behalf of both of its clients by accessing a 'lit' order book. The buying client then pays a higher price than the selling client for no good reason.

- Less risk of the market moving against the client's interest

Without the protection the waivers provide, the broker would force to publish orders and thus flag their clients' intent to the market. With this information the market could move against the client, which is an unnecessary risk and avoidable cost for the end-investor.

In any discussion as to the need to retain the waiver, it is important to be clear as to the trading venues to which the waiver would apply. For instance, the reference price waiver operates for MTFs and RMs and any executed transaction will always be required to be published without delay and could not qualify for any post-trade delay. In addition, the reference price waiver allows asset managers to place orders to buy or sell large blocks of equities on behalf of their clients, commonly a range of funds, life pools and pension schemes. These long-term investing clients are vulnerable to the risk that other market participants will identify their need to trade in large size and move the price against them. The suppression of the reference price waiver would limit the capacity of long-term investors to invest in the SME market because of important execution cost and impact finally the potential growth of the global economy.

Therefore, we consider that all waivers should remain in place, at least until a full-fledged Consolidated Tape for all financial instruments is in place.

We also consider that, should the Commission impose a threshold, this threshold should be at or above €30,000. This would increase the number of quotes of the lit market and allow private investors the ability to trade in their size on the same terms as institutional investors. Limiting the ability to cross stock to this threshold and above will also automatically increase the average size of dark trades. Market integrity is maintained, and transparency enhanced. The Commission should also remember that instant trade reporting also makes an important and substantial contribution to pre-trade transparency.

Lastly, and regarding alternatives to improve transparency available to market participants, we suggest introducing a maximum of four order types a trading venue may offer. Our view is that the exchanges offer too many order types that are not for the benefit of the end-investor.

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

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:

As stated in our replies to Question 5, 21, 23 and 26, we do not support the continuation of the STO.

As explained in our replies to Section 1, 1 of the questionnaire, we consider that a CT should cover all financial instruments.

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:

We agree, but as mentioned in our reply to question 11, we consider that pre-trade information should only be implemented in a second phase, as we consider that high-quality information on post-trade is sufficient to provide sound price formatting investment decisions.

4.3. Post-trade transparency regime for non-equities

Question 30. Which of the following measures could in your view be appropriate to ensure the availability of data of enough 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shortening of the 2-day deferral period for the price information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shortening of the 4-week deferral period for the volume information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Harmonisation of national deferral regimes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keeping the current regime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 30.1 Please explain your answer to question 30:

We think that current deferrals and waivers should be kept as such as they work well to protect the end-investors' benefits.

However, we would like deferral regimes to be harmonized, to facilitate our trading activity as compared to today where we must cope with various national deferral regimes.

Regarding the different waivers, funds and asset managers are investing for and on behalf of their clients.

To efficiently do so and to reduce costs of transactions, they are frequently using waivers separately or in combination with each other since they interact to safeguard and facilitate institutional investors' ability to efficiently implement substantial investment decisions.

Therefore, we do not believe a change to the requirements applicable is necessary (option 1) and we consider that all waivers should remain unchanged at least until a full-fledged Consolidated Tape for all financial instruments is in place and the benefits of its implementation have been assessed.

II. Investor protection⁷

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="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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:

	Estimate (in €)
Benefits	No response
Costs	No response

Qualitative elements for question 31.1:

We believe the MiFID II Level 1 framework broadly strikes the right balance in terms of investor protection and encouraging investments, other than in relation to professional investors (see below). However, the Implementing Directive and Regulations are too prescriptive and targeted adjustments to the Level 2 framework are needed.

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

Especially with regards to ex-ante and ex-post cost disclosures, the appropriate balance of investor protection between retail and professional investors has not been achieved by MiFID II (and PRIIPs). In particular, the amount of prescriptive information being communicated to professional investors – before or after their investment decision – in addition to the extensive suitability and appropriateness test, causes unnecessary irritations for this type of clients, who often demand bespoke reporting. We note that ESMA has made similar comments in its recent advice on ‘inducement and costs & charges disclosures’ to the Commission.

More flexibility should be provided (including ‘semi-professional’ type investors – see our responses to Questions 42 and 43). These should include:

- Either allow professionals to opt out of the ex-ante cost disclosure according to Article 50 of the Delegated Regulation or a general disapplication for professionals with the option to opt in.
- Where a bilateral agreement on periodic reporting is in place, allow professionals to opt out of the periodic reporting on portfolio management as set out in Article 60 of the Delegated Regulation.
- For professionals, remove the requirement for a written agreement for investment advice (as laid out in Article 58 of the Delegated Regulation).
- For all types of investors, delete the ‘10% depreciation alert’ (as required by Article 62(1) of the Delegated Regulation) as it encourages short-term behaviour, does not provide any added value for these types of clients and increases operational costs to comply with this requirement.

Also, the disclosures in PRIIP KIDs for retail investors are not properly aligned with those in MiFID II, which results in retail investors receiving diverging and contradicting figures. It is therefore essential that a review of the PRIIP KID ensures that its information is aligned with MiFID II and merely presents the essential MiFID II cost figures to potential investors rather than creating its own subset of disclosures.

With regards to Question 31, it is interesting to note that the Commission’s question implies that ‘more’ investor protection is necessarily ‘better’ for investors. This is not always the case, as ‘more’ investor protection may deter first-time investors from converting (some) of their cash deposits into long-term investments. An example for this is the exceedingly high number of documents needed to be signed by investors before a first-time investment. It is essential to find the right balance that protects investors while encouraging investments into the capital markets.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costs and charges requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

1. Easier access to simple and transparent products

Please specify which other MiFID II/MiFIR requirements should be amended:

Overall, we believe that the necessary changes to allow for greater retail participation can be achieved by targeted amendments to the Level 2 framework as well as to ESMA guidelines and Q&As. In some cases, more coordination by NCAs is necessary as different local interpretations, as well as supervisory priorities, lead to different outcomes in certain Member States. Also, one must not only consider financial

instruments falling under MiFID but also investor protection rules for comparable insurance-based investment products.

We struggle with the term ‘simple investment products’ (raised in Question 32) as MiFID II only distinguishes between complex and non-complex investment products. The underlying logic is that investors do not need advice for the latter when making investment decisions (falling under the ‘execution-only’ regime). However, simply because investment products are non-complex or ‘simple’ does not mean they are more suitable (especially for first-time investors). Investment products such as diversified funds may allow investors to invest in the capital market while enjoying the necessary diversification of their underlying investments, for example.

It should be considered whether such non-complex products should also benefit from a lighter product governance regime that would make it easier to distribute these products to retail investors, to increase their participation in the capital markets. Please see our detailed suggestions in our response to Question 32.1 below.

Taking into consideration our above comments, please find our concrete suggestions in Question 32.1 below.

Question 32.1 Please explain your answer to question 32:

With regards to specific amendments, we see a need for targeted changes to the Level 2 framework (and subsequent changes to Level 3) with regards to (1) product and governance requirements and (2) costs and charges requirements.

Product and governance requirements

First, more flexibility must be given to distributors (with ultimate knowledge of the end-investor) to advise on, select or offer products outside the manufacturer’s identified target market. This is essential as manufacturers only have theoretical knowledge of the end-investor. Due to current liability risks for distributors, sales outside the target market are rare occurrences, even in the case of risk diversification. Distributors are concerned about possible litigations in relation to any type of sales outside the target market. To ensure that investors can hold well-diversified portfolios, this principle should be centrally enshrined in the Level 2 framework instead of featuring as a side note in the current ESMA ‘target market’ guidelines.

Second, in line with our comments to Question 32, we do not agree with the current understanding that only (non-structured) UCITS funds can be considered “non-complex”. Several EU Member States have permitted ‘retail AIF’ schemes which (akin to UCITS) are aimed at retail investors. These types of funds should also have access to the test in Article 57 of the MiFID II Delegated Regulation.

Costs and charges requirements

The MiFID II Delegated Regulation should be revised to provide more flexibility with regards to distinguishing between the different needs of retail, professional and eligible counterparties. In particular, for the latter two categories, it should be possible either to be exempted and opt-in or to opt-out of many of the ex-ante and ex-post requirements, if these do not provide additional value for the investors (or they have already agreed with the service provider a different type of disclosure). We also note that ESMA has made similar comments in its recent advice on ‘inducement and costs & charges disclosures’ to the Commission.

Most importantly, the current reporting requirement for portfolio managers in the case of a 10% depreciation of the portfolio (Delegated Regulation’s Recital 95 and Article 62(1) and ESMA’s ‘investor protection’ Q&As on “post-sale reporting”) should be deleted. Professional investors do not need this

information and retail clients often misinterpret this alert as an indication to sell or withdraw money from the portfolio. While this requirement's well-meaning intention was to provide transparency, especially in times of crisis, it adds to short-termism and is mostly in contradiction with the long-term view of the portfolio manager. Additionally, the current rules assume the feasibility of daily valuations for all types of underlyings. This is not possible. The Commission should also consider whether these '10% warnings' run counter to the notion of long-term investing for retail investors, effectively encouraging pro-cyclical behaviours.

Continuing with the notion of increased flexibility, the Level 2 rules should also acknowledge that the costs and charges requirements should only have EU investors in scope. Due to non-EU investors requiring different disclosures, they should either be excluded from these requirements or have the flexibility to opt-out of the existing cost and charges requirements. Indeed, most jurisdictions mandate their own disclosures, with which EU providers must comply. You will find more information in our responses to the questions below.

We also believe that certain clarifications from ESMA with regards to the disclosure of "cumulative impact on return" is required. In our view, cumulative impact is the total of the costs expected over the recommended investment period. In particular, this would show "cost peaks", such as entry or exit fees for investors to better understand a product's cost structure. It should not, though, include any (future) performance assumptions which could be misleading for investors.

Furthermore, we would ask for certain clarifications in the Level 2 texts in relation to a client's optional request to be provided with cost disclosures on an ISIN-by-ISIN level. This puts an unnecessarily heavy burden on service providers relative to the benefit to the client and may encourage clients' focus on the immediate cost rather than the longer term view/potential benefit of an investment, particularly for investments that have entry costs. We, therefore, believe that an alignment with ESMA's investor protection Q&As (#9.24) stating that "due to the nature of the service of portfolio management (management on a discretionary client-by-client basis), no cost disclosure is due in relation to each investment decision taken by the firm" would be helpful.

Last but not least, it is essential to ensure that costs and charges disclosures are identical for investors when making investment decisions. This means that the PRIIP KID must be revised to reflect the cost and charges methodology under MiFID II rather than having its own complex standards and methodologies. It goes without saying that providing conflicting information is not in the interest of investors or the financial industry.

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 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

We believe that in some instances the investor protection rules for complex products may not be correctly calibrated. In line with our response to Question 32, we believe that the notion of complex and non-complex products should be revisited. Article 57 of the MiFID II Delegated Regulation should be revised to recognise that national AIF regimes targeted at retail investors exist in some Member States. These types of 'retail AIFs' should also be considered as non-complex financial instruments.

Any changes to the current regime should also consider the differences between investment advice and the provision of portfolio management services in relation to retail clients. With regards to the latter, a client should be allowed to hold financial instruments intended for professional investors, as those assets are managed by a regulated and experience investment firm. This is delineation is already enshrined into national law in a number of EU Member States.

2. Relevance and accessibility of adequate information

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

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?

We believe that further flexibility in the form of either opt-outs or general disapplication with the possibility to opt-in is necessary for professional clients and eligible counterparties. These opt-outs should apply to both ex-ante and ex-post information instead of only the former. In many cases, professional investors negotiate bilaterally what type of information they wish to receive which means that the standardised ex-post information presents no additional value to them. The same flexibility should also be extended to non-EU clients as the standardised EU disclosures may not be in line with their national regulatory disclosure regimes or their needs.

In line with our answers to Questions 41 to 45, we believe that certain retail clients should be allowed to opt-up to become professional clients if certain conditions are met.

In line with our response to Question 32, the Commission should also consider allowing the opt-out of the '10 % depreciation' warning for investors.

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

With regards to our response to 'other', please see our responses to Questions 40 and 42.

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:

We are in favour of a phase-out of paper-based information. For the time being, this should mean that necessary documents can be e-mailed as pdfs to clients rather than creating the need for complex databases which can be accessed through companies' websites or apps.

That being said, we are acutely aware that not all investors are technology-savvy. This means that there must always be an option for investors (i.e. opt-in) to receive paper-based documents. This opt-in should also apply for existing clients.

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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
General phase-out within the next 10 years	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
For retail clients, a general phase-out shall apply only if the retail client did not expressly require paper-based information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify in which other way could a phase-out of paper-based information be implemented?

In the light of urgent sustainability considerations as well as the current speed of digitalisation in society, we understand the need to develop a 'digital information first' policy. However, not all investors are technology-savvy and this needs to be taken into consideration. Therefore, clients (both new and existing) should in any case be allowed to 'opt-in' to receive paper-based information. For this reason, we are more cautious and would not define a concrete 'phase-out' date for paper-based information at this point in time.

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:

A large number of questions remain with regards to the ambition, content and scope of such a database. We agree that access to data is increasingly important. An open EU-wide database could alleviate the cost pressures faced by paying for certain information through commercial data suppliers.

That being said, we note that the introductory remarks link the creation of a database to investors complaining about a lack of cost comparison. Given the current complications around the PRIIP KID, we wonder how successful an EU-wide database could be, given that comparability among different types of PRIIPs is still an outstanding issue which has not yet been solved.

In addition, given the diversity of existing disclosures (in particular statutory sales documents for PRIIPs and investment funds) there is also a clear risk of an "information overload". It is doubtful whether retail investors who do not already use the above-mentioned documents would consult another source of information. Thus, the establishment of a further database in addition to the existing information media seems rather unsuitable.

In conclusion, our comments show that a much clearer definition of the scope and objective of such a database and its target audience are required before any next steps can be taken.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
All products that have a PRIIPs KID/ UCITS KIID	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Only PRIIPs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please specify what other products should be prioritised?

The scope of products within such a database should include transferable securities and all products with a PRIIP KID/UCITS KIID. To restrict coverage would go against the policy objective of a comparison tool.

Question 38.1 Please explain your answer to question 38:

See our previous response.

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:

There are several factors to be considered if ESMA should develop such tool including, costs, technical and operational matters.

3. Client profiling and classification

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:

We understand that certain types of retail clients with sufficient experience with financial markets, including (but not limited to) high-net-worth individuals, certain non-IORP pension funds and family offices feel constrained by the existing client classification rules.

However, creating new client categories or sub-categories within MiFID II would be a complex undertaking which would lead to a high number of changes throughout the entire MiFID framework, leading to high implementation and ongoing operational costs for investment firms. A simpler alternative would be to review the existing criteria for these types of clients to qualify as professional investors.

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:

We agree with a lower threshold of EUR 200,000, instead of the current EUR 500,000 threshold.

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:

Generally speaking, we are acutely aware of important gradients among the three existing MiFID client categories. We also note that some EU Member State (such as Germany) have already created a category of 'semi-professional clients' in their national legislations which forms the basis of the Commission's proposal.

While we agree with the notion of 'semi-professional clients' (and the intention to provide much-needed flexibility for these types of clients – see our response to Q41.1 for more details), we do not believe that the creation of new client category is the right way forward. The creation of a fourth client category would create a large number of changes to the entire MiFID II framework and lead to very high follow-up implementation costs for the financial industry.

We are certain that the same objectives can be achieved by (1) calibrating the preconditions to allow these types of institutional clients to opt-op under certain conditions and (2) providing a more flexible regime for professional investors.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information provided on costs and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Product governance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

In line with our answer to Question 42 and 42.1, retail clients that can be considered as 'semi-professional clients' should be allowed to opt-up to professional client status. Professional clients (rather than just semi-professionals) should be allowed to opt-out of costs and charges disclosures and product governance rules (depending on the Commission's decision with regards to the governance regime for non-complex products highlighted in Questions 47 and 47.1). The opt-out of cost and charges disclosures for professionals and eligible counterparties was also supported by ESMA in its recent advice to the Commission. Overall, this should allow for a more tailored and proportional approach for these non-retail clients.

Furthermore, further refinements to the current client categorisation procedures could also be considered. For the moment, the request to opt-up must come from the client. It should also be considered that the investment firms can suggest such an opt-up which would then have to be confirmed by the client in

writing. This would ensure that clients are correctly categorised and receive the right level of investor protection given their status.

In addition, further additional clarifications should be made to the definition of “professional clients” with regards to Annex II of MiFID II to capture better all types of professional clients:

- Point (2) on should refer to ‘entities’ instead of undertakings’
- Point (3) should also refer to ‘funds’ (instead of only ‘debt’) being managed by national and regional governments
- Point (4) should be redrafted to encompass further financial activities along the following lines: “Other institutional investors who are investing in financial instruments, managing a portfolio of at least EUR 10 million.”

Question 43.1 Please explain your answer to question 43:

It is essential to restore some of the proportionality with regards to client categorisations which was lost through the introduction of MiFID II. As professional investors do not need all the investor protection safeguards that are essential for retail investors, a revised MiFID framework should allow for these particular clients to opt-out of certain requirements if they do not provide any added value.

Please see our suggested changes to the definition of ‘professional investors’ in our response to Question 43.

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:

Due to the very large number of changes a semi-professional client category would entail, it would be far preferable to permit certain (currently ‘retail’) clients (such as certain HNWI, pension funds and family offices) to be able to opt-up. This would introduce much-needed proportionality while keeping implementation costs low.

Please see our suggested changes to the definition of ‘professional investors’ in our response to Question 43.

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:

In line with our previous answers, rather than creating a new semi-professional category, we would rather see this type of client being able to opt-up from retail to professional client status. This requires a review of the opt-up criteria. We make specific recommendations below and emphasise that fulfilment of these criteria should be considered only as a first step before a more detailed knowledge and experience test is carried out to confirm whether an investor should be considered as professional.

More flexibility must be introduced as MiFID II covers a wide range of financial instruments. The goal must be not to favour certain instruments over others. For example, the number of transactions undertaken in the course of the previous year can depend on the type of financial instruments being purchased. A higher number of transactions will generally be undertaken when investing directly into individual securities or unlisted assets, rather than into diversified funds, for example.

We propose that the current number of conditions be increased from three to four. Two (or more) would have to be met before a retail client could be considered to opt-up to becoming a professional client:

- Reduce the current ‘10 transactions per quarter and 40 transactions per year’ criteria to 20 transactions over the previous year. In addition, a lower threshold should be considered for diversified funds and for illiquid instruments (e.g. two illiquid transactions in the previous year).
- Reduce the threshold of the client’s portfolio from currently EUR 500,000 to EUR 200,000.
- The wording of the “sufficient financial knowledge and/or experience” criterion should also refer to “a master-level diploma (or higher) in economics or finance, or has managed a portfolio of more than EUR 500,000 over the last five years, or has worked in fields that involve financial expertise for at least one year, or has gained other similar experience”.
- Add a fourth criterion that the client has or wishes to undertake a transaction in a financial instrument of over EUR 100,000.

Please see also our suggested changes to the definition of ‘professional investors’ in our response to Question 43.

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:

It is essential to restore some of the proportionality with regards to client categorisations which was lost through the introduction of MiFID II. In addition, the additional threshold of EUR 100.000 would also be in line with the Prospectus Regulation which considers investments of this size as wholesale investments for certain issuances.

4. Product Oversight, Governance and Inducements

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:

Due to a lack of proportionality, we believe that the current Level 2 framework is preventing retail clients from properly accessing suitable products.

Most importantly, 'appropriate or suitable' products must be seen in the context of a client's well-diversified investment portfolio. While a product, in isolation, may seem unsuitable, the overall portfolio may be geared towards generating more return (and risk) over the long run.

It is therefore essential more prominently to enshrine the overarching principle of diversification in the Implementing Regulation, in particular vis-à-vis the new target market requirements. Currently, a reference to diversification is made only in the context of selling outside the target market in the ESMA guideline. This leads many distributors to question sales outside the target market, even for risk diversification purposes. In economic terms, it will lead to lost returns for investors over the long run. This reluctance is reinforced by additional reporting requirements that take effect once a product is sold outside the target market. Manufacturers must be informed, which creates significant additional operational and logistical burdens for distributors.

Furthermore, governance principles, such as the identified target market, cannot be looked at in isolation, but rather in connection with the entire MiFID II investor protection framework. Some national retail AIFs could, for example, be considered as suitable for retail investors and thus be sold execution-only (i.e. without advice or appropriateness test). However, ESMA's Q&As explicitly consider that any type of AIF should be considered as complex under MiFID II (whether falling under a national retail scheme or not) and must, therefore, be sold with advice. This contradicts Article 57 of the MiFID II Delegated Regulation, which allows the detailed target market considerations for a product to lead to it being classified as non-complex.

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="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
It should apply only to complex products.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other changes should be envisaged – please specify below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 47.1 Please explain your answer to question 47:

We agree that more simplified governance rules should apply to retail/non-complex products (see lines 1 and 3 in Q47). This would reintroduce much-needed proportionality in the MiFID II framework. However, as per our comments in Q32.1, if disapplying product governance rules to non-complex products will not be deemed appropriate then a 'lighter-touch' product governance regime should be considered'.

With that in mind, we repeat our previous request to amend Article 57 of the MiFID II Delegated Regulation to state that AIFs following national retail schemes should automatically be considered non-complex or to allow the individual identified target market assessment to conclude that such an AIF can be considered non-complex as it is "readily understood [by] the average retail client" (lit. f of Article 57).

However, we understand from the bracket in question 1 that reference is made to the Prospectus Regulation's Article 1(4) which excludes securities whose denomination per unit amounts to at least EUR 100,000. We ask the Commission to clarify whether any type of retail products (including funds) should benefit from a lighter governance regime or only certain bonds.

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:

It is essential to maintain choice for investors. Therefore, we agree that investment firms should continue to be allowed to sell a product to a negative target market if the client insists. For record-keeping purposes, it should be noted that the client was duly informed but wished to acquire the product nevertheless.

This, as explained previously, should exclude cases of risk diversification. For example, even if a client's portfolio/objective is geared towards long-term growth, it will still be essential to also hold some cash-like positions to properly diversify his/her risk to achieve the investment objective.

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:

Non-independent advice is an important cornerstone in the distribution of financial products throughout the EU. MiFID II introduced many changes, such as an enhanced quality enhancement test, more stringent management of conflicts of interest and heightened (cost) disclosures requirements.

Overall, we believe that the current rules are well-calibrated, compelling distributors to act in the best interest of their clients. Thus, we do not believe that any changes to the Level 1 framework are necessary. In addition, any changes to the inducement regime must be aligned with IDD which has less stringent rules in relation to inducements, which leads to advisers in some instances favouring insurance-based investment products over financial instruments.

In addition, detailed evaluation, in particular, of the evolution of 'open architecture' distribution, the total cost of ownership, access to 'traditional' vs. 'digital' distribution channels and the overall availability of advice for all EU citizens is needed in order for the Commission to consider any changes to the current rules on inducements. Given that the MiFID II framework has only been introduced in 2018, we would understand that it will take some time for meaningful data to become available.

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:

In line with our previous response, we disagree with an outright ban on inducements. While access to independent investment advice is important, one must consider that non-independent advice is the prevalent form of distribution throughout Europe.

Banning inducements would have substantial and far-reaching consequences in terms of overall access to investment advice for all European citizens. Experiences in other countries, which have chosen to ban inducements, have shown that certain demographics, in particular mass retail investors, are left with no possibility to access advice as distributors had put in place minimum investment amounts. As the cost of advice still has to be paid, it also does not necessarily decrease the total cost of ownership. Given that fee-based investment advice incurs certain fixed costs (e.g. per hour of the investment adviser's time), this again favours rather large investments compared to smaller investment amounts.

We, therefore, caution the Commission against any hasty decision to dismantle the existing EU distribution model without any robust alternatives to take its place. In particular, the effects of the MiFID II overhaul which only entered into force in 2018 should be studied and the overall quality of advice when compared with insurance-based investment products. We understand that this view is shared by ESMA which suggested in its recent advice to the Commission that further research is needed.

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:

We agree that staff must be properly qualified in order to give high-quality advice. However, many governance requirements (including ESMA's guidelines) already exist to ensure that staff providing investment advice must be properly trained and knowledgeable. We do not believe this should be a focus of a potential MiFID review.

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

5. Distance communication

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:

Given that in many instances it is impossible or impractical to provide the client with the ex-ante cost information before a transaction is executed, it should be possible to provide this information after the transaction's execution. Furthermore, certain waivers should also exist for professional investors who transact regularly.

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:

Record-keeping systems have already been put in place and it would be uneconomical to scrap these systems now that they are up and running. We, therefore, ask for no changes with regards to taping and record-keeping requirements, although consideration might be given to allowing an opt-out for investors who do not wish to be recorded.

6. Reporting on best execution

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:

We consider that:

- The information imposed by the legislation (e.g. the reporting of the five venues or the transactions reporting in SFTR) is overly complex and disconnected from the needs of the end investors,
- the RTS 28 could be modified to add additional clarity to clients on how asset managers are handling their orders, e.g. as a particular asset class might appear disproportionate in a portfolio from a unique investor' standpoint but well balanced in the broader view of the fund. .
- We have not (yet) found value in RTS27 reporting. Please see our responses to Q56 and Q56.1.
- The transactions are rarely originated by end clients but rather via professional intermediaries that should be able to "translate" their clients' requirements into investments and be able to explain the principles applied to manage their assets. In that perspective, we therefore question the Commission's approach to request such detailed information.

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

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

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

Some minor amendments could, we believe, make a significant impact in terms of enhancing the usefulness of these reports.

Question 56.1 Please explain your answer to question 56:

We ask the Commission to keep such reports unchanged, besides the publication of already available information to avoid useless costs. It is important to keep in mind that a change to those reports has a cost similar to the creation of such report. In addition, we note that even some retail clients are already using those reports, challenging the need to adapt or replace them.

Our primary request in terms of reporting would be to enforce LEI and ISIN's on a worldwide basis. This would help market participants validate our reporting and reduce our reliance on market data.

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:

Even when data quality is good, retail clients do not make use of these information.

III. Research unbundling rules and SME research coverage⁸

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

It is evident that the introduction of the unbundling rules has had an impact on the quantity and quality of research. Asset managers have implemented MiFID II provisions, and today can live with them to a

⁸ The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

large extent. We are still in a “price discovery” stage in the European market, but this is maturing as more information on price and service become available.

Effect of unbundling on the quantity.

We have observed a decline in the volume of research, especially in the area of sales coverage, which has been impactful on our process.

This can manifest also differently within certain markets but when looking at the European market as a whole, it is apparent that there has been a fall in the supply of research into smaller firms and a gravitation towards the largest companies where there will be a known demand for research material. Research into smaller firms has always been less prevalent and it is likely that unbundling will amplify this trend.

One effect of unbundling on research quantity is that there are not enough investors to pay for the research on small and mid-caps. Therefore, analysts are producing less research on these securities and small/mid companies are losing financing and liquidity. For example, according to the Giami / Eli-Namer report on research⁹ endorsed by the French Market Authority (AMF) in January 2020, in mid-2019 the cover of the Euronext B compartment (companies valued between 150 million and 1 billion euros) decreased by 26 %.

Effect of unbundling on the quality.

We have not seen a noticeable increase in the quality of research. To the contrary, our members note a decrease in quality in some asset classes due to the budgetary pressure on equity research teams in the sell-side and their tendency to use more junior staff that is covering a wide range of stocks. This has been accompanied by a relative reduction in the number of senior research analysts.

According to the Giami / Eli-Namer report on research, the unbundling leads to a decline in the quality of financial analysis. In France, for example, the decline in the quality of financial analysis is reflected in shorter analyses provided by more junior analysts.

Effect of unbundling on the international pricing of research.

The unbundling causes a problem of level playing field between EU27 and non EU27 players, particularly regarding US players.

Indeed, American research providers may share research costs on all their clients including their EU investors, offering lower cost to them, whereas EU asset managers are charged per underlying clients by EU research providers.

Conclusion.

While the unbundling rules had a visible effect on charging structures and a better awareness that the provision of research is a service, remaining ambiguities in the scope and meaning of the rules also have an impact.

This includes lack of clarity around the participation to conferences or the distinctions between small and medium sized brokers at international level.

For instance, and related to the participation to international conferences, there has been uncertainty whether the hosting bank should charge their local clients. There can be complexities with obtaining

⁹ “Reviving research in the wake of MIFID II, Observations, issues and recommendations”, <https://www.amf-france.org/sites/default/files/2020-02/20200124-rapport-mission-recherche-projet-va-pm.pdf>

costs and paying, which can act as a barrier and may pose the difficulties to firms operating in a region that still allows bundling (like the US).

10

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

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Authorise bundling for SME research exclusively	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prevent underpricing in research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amend rules on free trial periods of research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

We do not believe that any of the proposals described above would have a meaningful impact on the provision of SME research. Authorising bundling of SME research alone is no longer practical in the current market for research, as clients will not accept a "re-bundling" of research payments to their commission rates.

While there may be scope for regulatory interventions, there should also be an acknowledgement that part of the onus lies with SMEs themselves to raise their profile with prospective investors.

This is however challenging as financial markets are technical, and it will not be readily apparent how to engage institutional investors.

Consideration could be given to establishing an industry led programme whereby firms pay fees to an exchange in return for brokers to provide coverage of them. Such an initiative could involve different parts of the sector, including brokers and asset managers to ensure best practice.

Therefore, we believe that transparency in the market between buy-side and sell-side would be more beneficial in providing a platform to promote better SME research provision.

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:

We should not introduce bundling for SME exclusively, as it would be impossible for asset managers to manage in parallel a bundled regime for SMEs and an unbundled regime for the rest of their assets in portfolio.

We consider the rules on free trials to be overly restrictive. We do not believe that three months is enough to develop a clear view on the value of a specific research provider.

Amending rules on free trial periods of research would be more relevant because under current rules we are subject to twelve months freezing period between two trial periods. We suggest reducing this freezing period to six months with the aim of facilitating competition between providers and thus increasing the quality of research. There would some merit also in extending the trial period from three to six months or to put a cap on the number of free trials without any time limit.

1.2. Alternative ways of financing SMEs research

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 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:

As per our response to question 59, we do see merit in a scheme being set up by a private operator without agreeing to finance it.

We believe that a program set up by a market operator to increase research coverage could involve

- corporates funding,
- a broker research scheme
- operated by exchanges.

This would require tight rules regarding the number of brokers involved, the research provided and the basis on which it is provided. An oversight structure could be developed that includes representatives of the wider sector, including asset managers.

We encourage the Commission to ensure that, in seeking to enhance the volume of research covering SMEs, they continue to prevent conflicts of interest where possible.

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:

We are against a partially public funding program, as it is not clear enough and might generate more complications.

Our members are not ready to finance such a program through new taxes.

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 Please explain your answer to question 62:

We are neutral on this proposal. If research generated by artificial intelligence is developed, the quality of this research must be at least equal to the research currently provided by the best financial analysts.

In addition, AI already plays a role in certain parts of the research market, especially to produce generic reporting items. As such, the volume of specific AI-driven research which contributes towards an actionable recommendation is very low. However, it should be noted that AI-driven research, even in the relatively limited role it currently plays, can reduce analysts' costs and allow them to focus on generating more detailed analyses and recommendations.

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

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:*

Many fund managers have an EU-wide scoping of SME assets.

If achievable, it would also be a win-win vis-à-vis non-domestic issuers and brokers. Having such an EU database would facilitate access to SME research from other Member States.

Lastly, for Central and Eastern Member State SMEs, it would be a way to get a better visibility at international level – it would fit the CMU 2.0 objective to facilitate the financing of CEE Member States companies.

Two conditions must be fulfilled in the setting up of this database:

- Access to the database must be free of charge. Asset managers are not willing to finance a research platform, neither through taxes nor contributions, and
- The content of this database should be limited to issuer-sponsored research only.

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:*

A centralised authority would be the best option as a repository for such a database if it existed.

We agree that ESMA is well placed to develop such database.

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:*

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 (cf. art. 36 of Dreg (EU0

2017/565) and that the information is made available at the same time to any investment firm wishing to receive it or to the general public.

We also consider that the framework arising out of art. 36 of Dreg (EU) 2017/565 (i.e. the existing guidance relating to conflicts of interest management, clarity in communications, and rules relating to marketing communications) is clear and does not need further amendment.

In addition, we consider that qualifying issuer-sponsored research as a minor non-monetary benefit, such as defined by Article 12, will support the development of issuer-sponsored research for the SMEs market.

To be useful to SMEs, we consider that the sponsored research needs to be:

- easily accessible,
- disseminated under the best conditions, according to the Commission's objective to develop the cross-border investments in EU SMEs,
- documented in a user-friendly format, especially for a research on a single issuer,
- provided transparently, with a focus on the fact this research is rarely independent, and
- preferably accompanied with extra-financial information such as the risk controls in place or the type of client's reporting.

Lastly, we note with concern that the rules relating to issuer-sponsored research could be read as not covering pre-IPO (or other transactional) research, where such research is not sponsored by the issuer, but is produced by the research department of an investment firm to educate potential investors in the new issue. It should be made clear that pre-IPO research of this type, although not paid for by the issuer, can still be distributed and received free of charge to potential investors, as an acceptable minor non-monetary benefit. This is currently the position (thanks to NCA guidance) in some, but not all, EU markets. We believe the rationale for this assessment is strong – where research is produced in advance of an IPO (or other capital markets transaction), it is produced in order that a potential investor base can better understand the investment proposition, and is made available to numerous potential investors. The correct policy (and existing legislative) outcome is, in our view, that this should be treated as an acceptable minor non-monetary benefit.

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:

In line with our reply to Question 65, we do not believe that issuer-sponsored research should qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565, as also expressed in our reply to question 65.1.

We believe that issuer-sponsored research, as defined in Article 12¹¹ of the Delegated Directive (EU) 2017-593 ensures the accessibility and the transparency on the "sponsored" character of this research to investors and falls within the definition of an acceptable minor non-monetary benefit.

One condition is that the relationship between the third party firm and the issuer is clearly disclosed (cf. art. 36 of Delegated Regulation (EU) 2017/565 and that the information is made available at the same time to any investment firm wishing to receive it or to the general public¹².

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:

There is no need to amend the rules applicable to issuer-sponsored research. However, we consider that it might be complemented by industry-led Codes of conduct, monitored by regulators.

The rules applicable to issuer-sponsored research should not be amended because article 12 of the Delegated Directive (EU) 2017-593 already adequately addresses this type of research.

To guarantee the quality of research, a professional charter of best practices drawn up by financial analysts in collaboration with investors would be welcome.

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Authorise bundling for SME research exclusively	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹¹ Article 12 of the Delegated Directive (EU) 2017-593:

"(...)3. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are: (...) (b) written material from a third party (...) where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;"

¹² Article 36, (a) of Delegated Regulation (EU) 2017/565:

"the research or information is labelled or described as investment research or in similar terms or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation".

Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prevent underpricing of research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amend rules on free trial periods of research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Create a program to finance SME research set up by market operators ²	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fund SME research partially with public money	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Promote research on SME produced by artificial intelligence	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Create an EU-wide database on SME research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amend rules on issuer- sponsored research	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

The regime applicable to investment research on fixed income should be revisited to improve the benefits for end investors. The fact that this research is now billed separately to the investors has not resulted in any change to the transaction costs (unlike on the equity side). No benefit is observed for the investor who ends up paying more for the same service.

While transactions costs for equities have decreased dramatically because research costs are billed separately, as had been forecast, the spreads in the fixed income markets have remained unchanged.

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

V. Derivatives Trading Obligation

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The DTO has provided EU added value.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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.

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

We consider that the critical point is to ensure the alignment of the trading (MiFID II) and clearing (EMIR) obligations, which is being tackled by the convergence between the two pieces of legislation.

We consider that, thanks to the successful implementation of the EMIR clearing obligation and the risk mitigations techniques, the DTO should be removed entirely.

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

If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:

EFAMA shares the analysis and the conclusions of ESMA on the necessity of aligning the DTO under MiFIR with changes to the clearing obligation (CO) made under EMIR Refit.

However, and as explained below, we would encourage the Commission to remove the DTO before it becomes enforceable while guaranteeing equivalence with other countries (especially the US).. We consider that maintaining a misalignment would be contradictory with the goal of EMIR Refit of achieving more proportionate, less burdensome regulation.

Should the DTO be maintained, we would insist on improving at least four aspects of the existing regime:

- Aligning trading and clearing regimes and scopes,
- Ensuring equivalence with the UK's and US' regime applicable to derivatives.
- Suppressing the DTO for SFC and NFC, to ensure alignment with EMIR Refit, and
- Suspending automatically the DTO when the CO is suspended.

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:

We have fundamental reservations against the DTO, as mentioned in our reply to question 78.

We also consider that, should CO lead to DTO, CCPs would have to either become a trading venue or members of venues. We do not believe that this is in line with the objectives of EMIR and MiFIR. We would, here again, challenge the consistency of imposing a DTO and would recommend authorities to abolish this obligation during the revision of MiFIR.

Regarding the application of the DTO, we consider that the extension of the CO as modified by EMIR Refit should be automatically applicable to the DTO. This would support legal consistency and would be consistent with G20 requirement as the FSB recognizes the relevance of having a different treatment for counterparties carrying a lower systemic risk. This approach would also respect the principle of proportionality in implementation of the legislation.

As the products subject to the DTO are the same as some of the products subject to the CO, the DTO should automatically be suspended when the CO is. Nevertheless, it is also coherent to create a standalone DTO suspension to align it with what applies to CO, e.g. in case of disappearance of an electronic platform.

We support the introduction of standalone DTO suspension provisions in MiFIR as consistent with and contributing to the goal of EMIR Refit of achieving more proportionate, less burdensome regulation.

We also consider that the suspension of the CO defined in EMIR should automatically trigger the suspension of the DTO in MiFID II, as the *sine qua non* condition of the DTO is the clearing obligation. Consequently, the suspension of the CO should suspend the DTO. The sole communication of the suspension by the CCP or the CM should suspend immediately and automatically CO and DTO. In addition, should a FC become SFC or should an NFC+ fall below a clearing threshold, both CO and DTO should be suspended. This mechanism should be automatic to ensure legal consistency. Relying on the adoption of RTS to achieve this result would not be fast enough.

Lastly, we urge the Commission to:

- Align the trading scope on the clearing scope. Should the DTO be applied, FC-/SFCs and NFC+ should be exempted from the DTO, in application of EMIR Refit,
- Ensure the equivalence with the UK.

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:

Regarding the application of the DTO on SFCs and NFCs, we consider that the extension of the CO as modified by EMIR Refit should be automatically applicable to the DTO. This would support legal consistency and would be in line with G20 requirement as the FSB recognizes the relevance of having a different treatment for counterparties representing a lower systemic risk. This approach would also respect the principle of proportionality in implementing the legislation.

We consider that the current market infrastructures do not provide a proper set up to bilaterally trade on electronic platforms. Therefore, we are not in favour of keeping a misalignment between the scope of counterparties subject to CO and DTO. Huge efforts have been undertaken by asset managers to onboard small financial counterparties for clearing. If such misalignment between MiFIR DTO and EMIR Refit CO is kept, exempted counterparties from CO under EMIR Refit will de facto be subject to clearing through MiFIR DTO, undermining all advancements brought by EMIR Refit.

We would however recommend here again to review and ideally abolish all trading obligations, at least for qualifying SFC and NFCs.

VI. Multilateral systems

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

Question 81.1 *If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:*

We agree with the Commission that the current definition of multilateral system is adequately reflecting the actual functioning of the market.

In addition, we note that the current market infrastructure does not allow counterparties to electronically trade in a bilateral fashion. Trading venues would have to adapt themselves to offer such a bilateral form of trading for derivatives. Counterparties such as FCs would therefore be obliged to centrally clear when electronically trading while benefitting from a clearing exemption. The lack of it creates an operational burden and imposes extra-costs as well as being in contradiction with the aim of EMIR Refit which was to reduce it.

We also consider that the suppression of the DTO should trigger the revision of the TO in its entirety (including for STO), at least for NFC+ and SFCs.

VII. Double Volume Cap ¹³

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

¹³ The review clauses in Article 52 paragraphs (1), (2) and (3) of MiFIR are covered by this section.

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:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

As already mentioned in our reply to question 23.1, EFAMA members are opposed to extending the scope of application of the DVC support. The mechanism does not result in positive outcomes for end-users nor improved price formation and contributes to complexity in the European market structure, particularly when routing orders. Instead, it has impacted the ability for firms to achieve best execution in line with their own objectives and for their underlying clients.

In addition, we do not support the imposition of artificial barriers to investors' choice resulting in a complex market structure of little benefit.

As discussed above (see our reply to question 27), we believe that all trades below €30,000 should be traded on lit markets and provided it is correctly trade reported, anything at or above this threshold, should be traded at the investor's choice.

Furthermore, extending the scope of the DVC to NTs in illiquid instruments will not be beneficial to the liquidity of the instruments subject to negotiated trades. Indeed, ESMA should be cognizant of the risks of diminishing the limited liquidity available in markets for illiquid instruments by subjecting them to excessive pre-trade transparency requirements.

We would like to highlight that the DVC mechanism has rendered the market more operationally complex in such a way as to adversely impact outcomes for end-investors. In addition, the dark trading restricted under the DVC has not migrated to lit multilateral venues but rather to alternative trading systems such as periodic auctions that can deliver better outcomes to end-investors than on-venue lit trading.

When assessing the impact of the DVC mechanism, we urge the Commission to consider the impact the suspension of on-venue dark trading has had on outcomes for end-investors. The concern for transparency should be complemented by regard for other criteria, such as best execution.

Therefore, we ask the Commission to remove the DVC obligation and related legislative provisions.

Should the DVC be kept, EFAMA does not support extending the scope of application of the DVC to systems that formalise negotiated trades for illiquid instruments.

VIII. Non-discriminatory access¹⁴

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 83.1 Please explain your answer to question 83:

We insist on the need to protect access to all sources of liquidity and all types of venues, including SIs. We believe that a variety of types of execution best serves the interest of the industry to maintain flexibility in innovation and different options when trading.

Therefore, we suggest that all types of venues and market participants, including Systematic Internalisers, are subject to rules that:

- Are coordinated but not necessarily identical,
- Foster market access and market competition,
- Offer the largest range of product offering to facilitate market liquidity, regardless of the size of the orders.

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 84.1 Please explain your answer to question 84:

We support open access as it contributes to creating more competition that helps controlling exchange fees, clearing and settlement fees and facilitate access to liquidity, which are beneficial to our clients.

We would, however, draw the attention on two points:

- 1) the open access has an unintended negative consequence: the increase in prices of market data (see also our reply to Question 3.1).
A recent ESMA report corroborates this finding by pointing to the fact that “overall market data prices increased, in particular for data for which there is high demand”¹⁵.

¹⁴ The review clauses Article 52 paragraphs (9), (10) and (11) of MiFIR are covered by this section.

¹⁵ *MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, pt. 37-38.*
(https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf)

This increase can be explained by changes in the market infrastructures landscape, since the implementation of MiFID I, due to the increased competition from other types of venues. This trend has been reinforced with MiFID II. Similar trends can be observed in the index and rating data space and we see a clear risk that the cost ESG data will meet the same fate.

- 2) We are in favour of open access to CCPs. However, the economics should not be overlooked, i.e. there should be sufficient investors' demand related to a clearing service before such service is imposed on, and implemented by, a given CCP.

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:

As detailed in our reply to question 84, the increase of data costs is a negative example indirectly coming from open access. In some cases, the price increases have reached 400% since 2017, as highlighted by ESMA¹⁶.

IX. Digitalisation and new technologies

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:

With regards to investor protection, we support rules that enable digital solutions, in keeping with one of the Commission's top priorities: encompassing the digital age. However, presenting information digitally will require profound changes to the MiFID II, IDD and subsequently the PRIIPs frameworks, as many of the current solutions and compromises will need to be reassessed.

In particular, the current frameworks are centred around the concept of a printed (or at least static) document. The PRIIPs framework even contains the word "document" in its title, which highlights the intention of a hard copy document being handed over to investors. Providing digital solutions, however, must mean more than simply presenting an investor with a pdf on a website, instead of a printed document.

This brings forward a large number of questions that need to be answered. For example, how could data be made available to investors, aggregated and stored? How can further details be shown if of particular interest to the investor? How interactive can be the information presented (e.g. should investors be allowed to vary the performance and cost assumptions and immediately see the results)? Would this assume that all underlying disclosure information is available for free online for these digital solutions to function properly? How do you make sure that the same high level of investor protection applies regardless of the type of distribution used (i.e. technology neutrality)?

That being said, the creation of (digital) data standards – on top of the regulatory standards – is no trivial task and should be fully thought through. EFAMA is well aware how labour-intensive such a process is, as data standards for MiFID II and PRIIP KIDs had to be developed to ensure that information can be transmitted from product manufacturers to distributors and insurance companies. Discussions on these

¹⁶ Steven Majoor, Chair of ESMA, ESMA (2018): [MiFID II implementation – Achievements and Current Priorities](#), p. 5

standards took many months and the standards require regular updates to accommodate changes to the Level 2 framework or newly published guidelines and Q&As. To ensure the long-term viability of these particular digital standards (and many others), a dedicated body called “FinDatEx” was created at the start of the year by a number of European financial associations (for more information see <https://findatex.eu/>).

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:

See our response to Question 86.

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:

The implementation of MiFID II and the absence of “revolutionary solution” prevented market participants from investing massively in new technologies

However, our members have made significant investments in technology over the past several years. IT teams in asset management firms have increased the capacity of their virtual private network (VPN) and significantly increased their bandwidth – in some places as much as ten-fold – to support businesses working remotely and to ensure secure, fast and reliable data transmission across their platforms.

Asset managers have the infrastructures that enable most of them to work from home without disruptions to their investment process, trading or core operations, to be reachable to their clients/partners (as evidenced in the Covid-19 context).

From a perimeter and access perspective and depending on the company, members use different technologies such as VPN technology to provide remote access. They also use Virtual Desktop (VDI). All these access methods are protected by multi-factor authentication.

From an onshore perspective, most members can detect rogue devices and limit their access and they are also enhancing their ability to detect abnormal home printing. In addition, some have posted articles about increased COVID-19 related phishing and are currently running a phishing exercise that is COVID-related to help educate/remind the organization of the threat of phishing as they are working remotely. Members are also reviewing their signature processes to support electronic signature and the controls associated with the signature process.

Regarding contractors, they are addressing this directly with the individual contractors as well as with the vendor firms. They are also looking at some anomaly detection to look for patterns that could point to this type of activity.

On the hardware side, several members-firms’ employees in business-critical roles have their laptops plus additional monitors so they can view spreadsheets and relevant software and system applications fully at the same time. In some specific cases, we are delivering additional monitors to make the setup even more effective.

On the organisational and coordination aspect, members have regular meetings, both at executive boards’ down to operations’ level to monitor operability of our services.

Regular interactions between managers and their teams together with regular management meetings ensure fluid communication given the circumstances

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:

Any DLT based issuance compliant with the applicable national or European framework would allow issuers to create their securities directly in the digital ledger along pre-determined formats and could free itself from a large part of the role of several market functions.

For instance, the impact of DLT on certain components of trading (e.g. trade enrichment or trade matching) could be linked to back-office procedures between trade capture and settlement instructions, significantly shortening settlement cycles.

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:

We agree that more can be done to adapt the MiFID II framework for digital distribution and online offers of investment services and products. However, any proposal must provide the same level of investor protection no matter the type of distribution being used.

Last year, EFAMA and other EU financial associations founded the 'Financial Data Exchange' (FinDatEx) to ensure that – among other things – standards for the exchange of cost and target market information existed to allow for the important flow of information between product manufacturers and distributors. This information is now codified in the 'European MiFID Template' that is available for free to all market participants. FinDatEx is currently working on standardising the target market feedback from distributors to manufacturers.

Given the huge amount of work such projects entail, we would certainly value more proactive input on this from the Commission and the ESAs to ensure that the work being carried out is reflective of the MiFID II framework.

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:

It is already possible today to develop robo-advice, with the existing regulatory provisions.

X. Foreign exchange (FX)

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 92.1 Please explain your answer to question 92:

We have a twofold reply.

Firstly, we consider it inappropriate to modify the scope or definition of spot FX contracts because:

- Spot FX should not be included in the scope of MiFID and should remain considered as a means of payment. To the contrary considering them as financial instruments could impact the calculation of thresholds in other legislations, such as EMIR,
- As ESMA rightly notes, the FX Global Code of Conduct ('the Code'), developed by central banks and market participants¹⁷ from sixteen jurisdictions around the globe, has already achieved progress in promoting higher standards in the wholesale FX market¹⁸.

We therefore encourage the Commission and ESMA to allow the market to use the reformed Code for the time being.

¹⁷ In our view, FX Global Code of Conduct committee could be more representative of the financial industry and less at the detriment of asset managers industry and we would welcome the support of the Commission to revise its composition.

¹⁸ See Consultation Paper on MAR review report, pt. 16-23.

Secondly and more specifically regarding the FX Global Code, should the Commission deem it necessary to act independently from the FX Code, we would encourage the Commission to not replicate the FX Global Code entirely as some provisions should be relevant only to Investment Firms.

Principles 11, 17, 21 and 23 are clearly detrimental or not appropriate for asset managers vis-à-vis their banking counterparts and should therefore be reviewed.

We encourage the Commission to investigate the routes of the Payment Service Directive or the Anti-Money Laundering Directive to reply to the stakeholders and competent authorities that raised concerns as regards to a potential eventual regulatory gap.

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

As explained in our reply to question 92.1, we would recommend adapting the Payment Service Directive's or the Anti-Money Laundering Directive's implementing legislations.

SECTION 3. ADDITIONAL COMMENTS

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.

We encourage the Commission to investigate further the role of, and cost charged by Data Providers.

In fact, even if the Consolidated Tape may solve some part of the issue related to the oligopoly power of Market Data Providers, we think that other types of Data Providers, namely ESG Data Providers or Index Providers, are progressively taking advantage of a similar oligopoly power.

In addition, beyond the oligopoly common issue, such players are more and more located or bought back by non-European players, which is now also raising an issue of sovereignty for the EU – as the source, quality and price of Data are critical for making many activities being run properly, including finance.

We are therefore asking the Commission, in parallel to the MiFID Consolidated Tape action, to launch a holistic Level 1 initiative on Data Providers. It would consist of:

- Common governance and transparency high level principles at Level 1, covering those various types of Data Providers,
- Complemented by amendments of the relevant Level 1 sectoral provisions applicable to these various types of Data Providers (e.g. MiFID II, BMR), and/or by Level 2 sectoral measures.

For this approach, our suggestion would be to start from the CRA legislation, and to replicate its governance and transparency provisions which are largely applicable to the various types of Data Providers.
