SWEDISH
SECURITIES DEALERS
ASSOCIATION

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SSDA's response to European Commission's public consultation on the review of the MiFID II/MiFIR regulatory framework

(*This document includes the responses that have been submitted through the Commission's online tool*)

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

	1	Very unsatisfied
x	2	Unsatisfied
	3	Neutral
	4	Satisfied
	5	Very satisfied

1.1. Please explain your answer to question 1 and specify in which areas would you consider an opportunity (or need) for improvements

The SSDA welcomes the opportunity to respond to COMs consultation regarding MiFID/MiFIR review. In our view, there are several areas which could be improved in order to ensure that the framework contributes to the well-functioning of EU capital markets.

In particular, we would like to underline the following:

- Due to the COVID-19 situation, EU capital markets are currently under a lot of stress. A cautions approach is therefore required, in particular as regards amendments to the market structure rules in MiFIR. All amendments must be evidence based and subject to thorough consultations with stakeholders.

- It is important that co-legislators recognize that the well-functioning EU capital markets needs both multilateral (trading venues) and bilateral execution venues (systemic internaliasers). We therefore strongly object to the proposal of deleting SIs as an execution venue for the Share Trading Obligation (STO) as this would reintroduce a sort of concentration rule in EU. Moreover, we are in favor of keeping the negotiated trade waiver (NTW) which in our view is an efficient way of turning negotiated deals into "on venue" transactions, in line with MiFID II objectives.

- Moreover, when comparing the rules applicable to SIs and trading venues it is important that co-legislators take into account that there is a fundamental difference between these two execution venues, namely that an SIs execute client orders against their own account and therefore are exposed to market risk. Thus, even though the SSDA recognizes that may be reason to revisit some of the rules in MiFIR e.g. in order to make the transparency regime less complex, it is important to underline that the rationale behind many of these rules was to avoid that increased transparency, in particular for bonds and derivatives markets, would force SIs take undue risk since this could harm the liquidity. These considerations are still highly relevant in the context of a MiFIR Review!

- MiFID II/MiFIR has been very costly for investment firms to implement and has required huge investments in new IT solutions, processes, staff training etc. It is therefore very important to ensure that an upcoming review will only include those amendments which can be completely justified from a cost/benefit perspective. The focus should be on simplifying the framework and to remove unnecessary regulatory burden rather than creating new rules. From this perspective, SSDA supports the deletion of the Double Volume Cap (DVC) as well as RTS 27 which we believe have brought very little use to the market at great implementation cost. For the same reason we are very skeptical towards the establishment of an EU Consolidated Tape (CT) which we think will bring little very benefit to market participants whilst increasing the market data costs.

- On the investor protection side, a priority for the SSDA is that the information requirements in MiFID II should be calibrated taking the type of clients into account. The SSDA therefore supports the introduction of exemptions for eligible counterparties and professional clients (e.g. cost & charges) as well as a review of the opt-up requirements in annex II to MiFID II. We also consider that in order for the information to make sense, MIFID II should distinguish more between different types of financial instruments (e.g. investment products vs. hedging instruments or packaged products vs shares and bonds). We also support a closer alignment between requirements in PRIIPs and the prospectus regulation.

- For both market structure and investor protection purposes, it is important to improve the data quality. The SSDA considers that the introduction of a "golden source" for determination of the "ToTV" concept as well as a higher degree of standardization e.g. as regards CFI codes would be helpful in this respect.

As regards challenges with the implementation process of MiFID II, we refer to the response by Nordic Securities Dealers Association ("NSA").

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

	1 (disagree)	2 (rather not Agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	NA
The EU intervention has been successful in achieving or progressing towards its MiFID II objectives (fair, transparent, efficient and integrated markets)		x				
The MiFID/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)		x				
The different components of the framework operate well together to achieve the MiFID/MiFIR objectives		x				
The MiFID/MiFIR objectives correspond with the needs and problems of EU financial markets				x		
The MiFID/MiFIR has provided EU added value			x			

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

The SSDA agrees with the general purpose of MiFID II/MiFIR, i.e. to enhance investor protection and improve transparency. However, as mentioned under Q 1.1, we believe that many of the rules would benefit from recalibration in order not to damage market liquidity or investor choice. The focus in the review should generally be on simplification, not introducing more rules. A cost/benefit analysis as well as consumer testing is very important.

In addition, we believe that measures such as improving data quality and increasing supervisory convergency in certain areas could be helpful in order to make the different components of the rules work better together. Alignment with other EU rules on reporting (EMIR) and pre-contractual disclosures (PRIIPs and prospectus) is also important.

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
x	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

In the SSDA's opinion the main impediment to an effective implementation has not been national legislation but the fact many detailed MiFID II/MiFIR requirements were developed very late in the legislative process which meant that firms had to start building IT systems etc. without having knowledge about the final rules. Moreover, the rules continued to develop after 3 January 2018 e.g. by ESMAs Q & A which in some cases forced firms to make significant changes to their implementation which of course was very costly and administratively burdensome.

In particular as regards some of the investor protection rules, the SSDA notes that local differences in pricing models and distribution channels have had an impact on the implementation e.g. inducements and cost & charges. In these two areas, divergent interpretations by national competent authorities proven has also been very challenging and made cross-order activities more difficult and expensive.

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
x	3	Neutral
	4	Partially
	5	Totally
	Don't know/no opinion/not relevant	

Question 4.1 Please explain your answer to question 4

The transparency has increased in some markets but not in others.

According to a report issued by Finansinspektionen, transparency on the Swedish bond market has decreased after MiFID II/MiFIR mainly due to the fragmentation and poor data quality. https://www.fi.se/en/published/reports/supervision-reports/2019/fi-supervision-15-decreased-transparency-in-bond-trading/

However, it should be noted that the transparency on the Swedish bond market before MiFID II/MiFIR did not include pre-trade transparency nor did it cover as many types of financial instruments. Moreover, the Swedish regime only covered instruments listed on a Swedish regulated market and not "ToTV". Also, the Swedish transparency regime pre-MiFID required aggregated information to be published though NASDAQ T+1. This meant that the investors got information relatively fast but without exposing the SIs to undue risk (since aggregation does not allow identification of which firm had entered into the transaction) whereas the MiFIR information is on a transaction level and includes significantly more information (which is more sensitive for SIs to publish). Thus, even though the SSDA agrees that from a user perspective, many market participants in Sweden consider that the MiFIR has decreased the quality of the transparency, it is also clear that the harmonized EU transparency regime is more extensive in scope.

The SSDA thinks that it was very wise of EU regulators to introduce safeguards in MiFIR and RTS 2 in order to avoid that the new harmonized transparency regime for non-equity would have a negative impact on the liquidity (e.g. phase-in of SSTI and liquidity assessment). In the context of a review, the SSDA is concerned that a political ambition to increase transparency will lead to that many of these safeguards will be removed without an in depth analysis of the consequences, which we believe could be very harmful for EU capital markets - in particular considering the stressed times that markets are in due to the COVIGD 19-crisis.

In order to allow for a proper evaluation of the EU transparency regime, the SSDA takes the firm view that measures aimed at improving the data quality are the most important for co-legislators to focus on at this stage. For instance, we believe that ESMAs database should be a "golden source" to determine which instruments are "traded on a trading venue (ToTV)" and we support an increased standardization of CFI codes to ensure that APAs classify instruments and publish the information the same way.

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?

x	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

As mentioned under Q 1, it is important that trading venues and systematic internalisers are able to co-exist and compete as execution venues on EU capital market. In order for this to work, MiFID II/MiFIR rules must take the differences in these business models into account. A fundamental difference is that SIs execute client orders against their own account, i.e. exposing themselves to market risk. Trading venues on the other hand match buyers and sellers of financial instruments without taking risk. The MiFID II/MiFIR rules need to be calibrated in a way so that SIs are able to handle their risk and hence are able to provide liquidity in order to meet clients' needs.

One area which currently could be said to create an "unlevel" playing field between trading venues and SIs is the pre-trade SI obligations in article18 MiFIR. These requirements require SIs to publish their identify when publishing pre trade quotes as well as to allow other clients to execute transactions on the same terms. Since SIs take risk, such requirements put SIs at a disadvantage compared to trading venues which are not subject to similar rules. The SSDA notes that ESMA raises this problem in its consultation paper on SIs file:///C:/Users/sarmit/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/esma70-156-1757_consultation_paper_-_mifir_report_on_si%20(1).pdf and in our response we support the deletion of articles 18.5-18.7 MiFIR as well as the requirement for SIs to publish their identity when publishing quotes.

Another area where we consider that there is an "unlevel" playing field relates to the fact that trading venues have monopoly on market data and use this position to force SIs to pay for derived data which they need to fulfil their obligations under MiFIR. This is a matter which we believe require the Commissions urgent attention.

For additional comments, we refer to the NSA response.

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
x	5	Totally
	Don't know/no opinion/not relevant	

Q6.1 If you have identified such barriers, please explain what they would be:

The SSDA Members have identified a number of barriers for investors for accessing investment products:

- PRIIPs and product governance scope; the inclusion of plain vanilla corporate bonds and hedging derivatives in PRIIPs and in the product governance scope have had as a result that retail client's access to such product types has diminished. The SSDA suggests that this is considered in the review process, also taking the aim of CMU into account (See Q 40.1).
- Annex II to MiFID II; the opt-up rules could allow sophisticated/experienced retail client to be treated as a professional client (and hence be able to invest in corporate bonds etc.) but are not sufficiently calibrated for all types of assets. The SSDA therefore supports that annex II is revised (see Q 40 and Q 41)
- Cost & Charges and Product Governance; the fact that these rules apply to non-MiFID producers has in practice forced some investment firms to restrict clients access to some products since they have been unable to receive data from the third party.
- Complexity and information overload; many SSDA members witness that the complexity and extent of the pre-contractual information that clients must receive under MiFID II/MiFIR have a discouraging effect and direct clients to other forms of savings e.g. insurance products or bank account savings.

Establishment of an EU consolidated tape

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)	NA
Lack of financial incentives for the running of a CT					x	
Overly strict regulatory requirements for providing a CT			x			
Competition by non-regulated entities such as data vendors			x			
Lack of sufficient data, in particular for OTC transactions and transactions on systematic internalisers		x				
Other,					x	

Please specify what are the other reasons why an EU consolidated tape has not yet emerged

No demand for it

Question 7.1 Please explain your answer to question 7

The SSDA believes there are several reasons why an EU consolidated tape has not emerged. Firstly, there is no real demand for it and therefore there has been no financial incentive to build one. Secondly, the regulatory demands on a potential CT provider are probably too strict and thirdly it is very technically challenging to build a good timestamped tape taking latency issues into account.

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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

The SSDA does not support a mandatory consolidated tape, because we see limited use and only extra costs associated with it. If a CT will be mandated there are some requirements that should be included:

- All instruments must be included for asset classes on the tape
- It must be public and free to use in any internal application
- There must be mandatory contribution to ensure all trades are captured
- Data must be independent to eliminate risk of exchanges charging for some sort of derived data
- High data quality is of utmost importance
- Strong governance structure

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

Please explain your answer

Increasing costs for market data is one of the major concerns for SSDA members. SSDA therefore supports any amendments that can help solve the problem and reduce the price for market data. Enforcing rules on delivering market data on reasonable commercial basis is important. SSDA does however not believe a consolidated tape can solve this problem. Most likely a CT will only add extra costs with very limited benefits for the users.
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)	NA
Transaction costs (TCA)	x					
Ensuring best execution	x					
Documenting best execution			x			
Better control of order & execution management	x					
Regulatory reporting requirements	x					
Market surveillance	x					
Liquidity risk management	x					
Making market data accessible at reasonable cost	x					
Identify available liquidity	x					
Portfolio valuation	x					
Other						

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

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

The SSDA sees that there could be some use for a CT in documenting best execution. However, the CT could not be used for ensuring best execution and it is still technically demanding. There could also be some use for other low latency end of day systems that need market data to use CT data rather than exchange market data.

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)	NA
High level of data quality					x	
Mandatory contributions					x	
Mandatory consumption	x					
Full coverage					x	
Very high coverage (not lower than 90 % of the market	x					
Real time (minimum standards on latency)						x
The existence of an order protection rules	x					
Single provider per asset class	x					
Strong governance framework					x	
Other			x			

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):

The SSDA is of the strong opinion that a CT will be of limited use and cannot solve any market data issues. It will only add extra cost. If a CT will be built it is important that it has a very high quality. Important features are:

- Data quality
- Mandatory contribution
- Full coverage
- Timestamps
- Governance

Full coverage is of importance for both usability and competition reasons. SSDA also want to especially stress the importance of and difficulties around timestamps.

A timestamp is problematic as the same exact time does not equate to the same accessibility. The location is too important today. Latency in between geographies means, by necessity, that two trades done at the exact same instant would be seen in a different order depending on your location. A transaction in London would be seen later in Stockholm and vice versa. This also means that the actual accessibility would be in a different order as a function of location. Therefore, a European CT cannot, with fairness, be used for controlling execution quality.

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 organized.

The SSDA does not support mandatory consumption.

Question 13. In your view, what link should there be between the CT and best e x e c u t i o n o b l i g a t i o n s ?

Please explain your answer and provide if possible detailed suggestions (e.g. simplifying the best execution reporting though the use of an EBBO reference price benchmark)

The SSDA does not believe there should be a link between CT and best execution. First best execution not only about price and time and second we see huge practical problems with timestamping as described in Q11.

If a CT could help creating a good high quality "golden source" for instrument data it could be of some use in creating best execution reports. It is however more related to data quality rather than a CT being developed.

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)	NA
The CT should be funded on the basis of user fees					x	
Fees should be differentiated according to the type of use	x					
Revenue should be redistributed according to contributing venues			x			
In redistributing revenue, price forming trades should be compensated at a higher rate than other trades	x					
The position of CTP should be up for tender every 5-7 years					x	
Other						

Please specify what other important features for the funding and governance of the CT you did identify?

Question 14.1 Please explain your answers to question 14 and provide if possible detailed suggestions on how the above features should be implemented (e.g. according to which methodology the CT revenues should be redistributed; how price forming trades should be rewarded, alternative funding models):

First, the SSDA wants to point out that we do not believe a CT will solve any issues related to continuous higher costs for market data from exchanges. Any cost for a CT will therefore only be a new added cost with most likely limited use. User fees is probably the most practical way to fund a CT, but it needs to be very cheap to attract users since we do not want mandatory consumption.

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)	NA
Shares pre trade	x					
Shares post trade				x		
ETFs pre trade	x					
ETFs post trade						
Corporate bonds pre trade	x					
Corporate bonds post trade				x		
Government bonds pre trade	x					
Government bonds post trade				x		
Interest rate swaps pre trade	x					
Interest rate swaps post trade	x					

Credit default swaps pre trade	x					
Credit default swaps post trade	x					
Other				x		

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

Covered bonds post trade
Equity derivatives, post trade
IBOR fixing

Question 15.1 Please explain your answers to question 15:

The SSDA believes that it will be close to impossible to create any form of usable pre trade CT. We also think a post trade CT has large challenges and will be of limited use. In case the construction of a CT will continue despite the poor use cases, it is the assessment of SSDA that:

- An equity post trade CT can be used for transparency purposes
- A post trade bond CT can be used to facilitate transparency
- An IBOR fixing could add some value, and if so, as a minimum include all Nordic and major European IBORs and future possible fixings on new RFRs.

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.

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)	NA
Shares admitted to trading on an RM					x	
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State					x	
Other	x					

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.

Question 17.1 Please explain your answer to question 17.

The SSDA is of the opinion that shares admitted to trading on a regulated market or shares admitted to trading on an MTF with a prospectus approved in an EU member state should be included. For usability it must be full coverage (100%).

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:

The SSDA believes all shares must be included, there is no use for limited subsets.

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:

According to the SSDA, there should be no flexibility.

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:

The SSDA only thinks a CT is realistic for bonds. If it were to be extended to other instruments maybe ISDA master could be one source for derivatives.

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:

The SSDA believes that the STO has reduced the amount of OTC-trading in advantage for volumes on RMs, MTFs and SIs and thereby increased transparency. The real problem is that this has created a very fragmented market with high costs for IT and connectivity to be able to address executable liquidity for best execution reasons. This fragmentation has led to decreasing quality of the exchanges order books since their intraday market share has gone down. More volumes are also executed in the closing auction, which further decreases volumes during normal trading hours.

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
x	3	Neutral
	4	Partially
	5	Totally
	Don't know/no opinion/not relevant	

Question 22.1 Please explain your answer to question 22.

The SSDA believes that there could be more clarity with regards to third country shares. it could be considered to reduce the scope of the trading obligation via excluding third country shares.

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

	1	2	3	4	5	NA

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	
Maintain the STO (status quo)					x	
Maintain the STO (status quo) with adjustments (please specify)	x					
Repeal the STO all together					x	

Question 23.1 Please explain your answer to question 23.

The SSDA has the strong opinion that SIs must continue to be considered as eligible execution venues and any changes to the STO should take this into consideration.

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)	NA
SIs should keep the same current status under the STO					x	
SIs should no longer be eligible execution venues under the STO	x					
Other						

Question 24.1 Please explain your answer to question 24

The SSDA is of the strong opinion that SIs should keep their status as eligible execution venue. The rules for SIs are clear and they operate on bilateral basis with own risk versus own clients, which is no problem. It is more important to enforce rules on the presumed interlinked SI networks that almost mimic BCNs. Another way to lower SI volumes would be to remove the double volume cap or allow for free use of the NTW.

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.

The SSDA believes that it is important to note that risk is not only a function of time, but of size and aggregation. An SI can be lifted on multiple shares simultaneously, an SI can quote volumes to its clients that are much larger than required and to handle these aggregated risks, automation is essential. If time should be discussed, low latency HFT activity on the primary exchange is much more of an issue as that activity creates perceived but illusory liquidity, thus diffusing the price discovery process. If an SI turns around into the primary market, the turnover reaches the market, thereby increasing aggregate liquidity, which is unproblematic.

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.

One important step would be to prohibit exchanges from charging SIs for derived data.

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

Fragmentation and tick-sizes are two areas which should get more attention. Liquidity is split on too many execution venues for a good price discovery. One suggestion is to remove the double volume cap, which would make less interesting to be an SI. The tick-

sizes has become too narrow, which means that there is no incentive to place passive orders in the orderbook. This results in thinner order depths and lower visible volumes, which is negative for price discovery.

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

x	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.

The use of a CT is limited and therefore no align of scope is not very important.

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
x	Don't know/no opinion/not relevant	

Question 29.1. Please explain your answer to question 29:

The SSDA does not support a mandatory CT. If a CT is nevertheless established, the scope should be aligned.

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	NA
Abolition of post trade transparency deferrals	x					
Shortering of the 2 day deferral period for the price information	x					
Shortering of the 4 week deferral period for the volume information	x					
Harmonisation of national deferral regimes					x	
Keeping the current regime			x			
Other						

Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

Question 30.1. Please explain your answer to question 30:

The SSDA is skeptical towards the establishment of a CT for non-equity as we fear that it will be of limited use and increase market data costs. If established, we believe that it should be phased-in and limited to post trade data for bonds only (with a time stamp). We want to underline that regardless if a CT is established or not, it is important to maintain a deferral regime that is appropriate in order to achieve the policy objectives of these rules, i.e. to balance the needs of transparency and liquidity. These are two separate questions.

The SSDA supports full-harmonization of national deferral regimes only if it can be ascertained that the regime still protects liquidity providers/SIs and their clients against undue risk. In particular for smaller or new markets which are dependent on a limited number of SIs also the price information is very sensitive. It is therefore not sufficient to only defer the volume since the market will know who sits on the risk and can act on this information. Therefore, the SSDA does not support the shortening of the 2 day price deferral or to replace it with volume omission only. Moreover, for very large transactions and transactions in truly illiquid instruments (i.e. which do not even trade on a daily or weekly basis), it is important to keep a supplementary longer deferral regime in the harmonized regime to protect SIs against undue risk.

The SSDA urges the co-legislators to be very cautious when considering amendments to the deferral regime in MiFIR in order to avoid a negative impact the liquidity of EU bond markets, in particular considering that the effects of the COVID-19 crisis are not yet known. At this point in time, we propose that the focus is to improve the data quality e.g. by allowing ESMA database to be a "golden source" for ToTV and to increase standardization of the CFI codes that would enable APAs to report in the same way.

Investor protection

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)	NA
The EU intervention has been successful in achieving or progressing towards more investor protection				x		
The MiFID/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)	x					
The different components of the framework operate well together to achieve more investor protection	x					
More investor protection corresponds with the needs and problems in EU financial markets	x					
The investor protection rules in MiFID/MiFIR have provided EU added value		x				

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, organizational requirements, HR etc.

Question 31.2 Qualitative elements for question 31.1

The SSDA confirms that the costs of implementing MiFID II have been very high, both in the implementation phase and on an ongoing basis. Many of the requirements have been very demanding from an IT perspective, in particular since many of the detailed rules were developed at a very late stage and were modified after the 3 January 2018 which required adaptations. For investment firms active on a cross-border basis, the lack of supervisory convergence in certain areas such as inducements has also led to additional costs.

The SSDA notes that the extent of IT costs is sometimes not clear to legislators and regulations. As an example, the Swedish supervisory authority estimated that the product governance rules would cause firms a one-off implementation cost of approx. 6,000 EUR (65 000 SEK) and that manufacturers would have ongoing costs of approx. 27 000 EUR (312 000 SEK, based on 240 h) and that distributors would have ongoing costs of approx. 14000 EUR (156000 SEK, based on 120 h). https://www.fi.se/contentassets/ad16baddff5b40b9a6969ca80bf7e2c8/remisspm_mifid2.pdf . For many investment firms the real figure has been several 100-times higher.

Two additional areas where SSDA consider that the costs/benefit analysis clearly show an unproportional result is implementation of RTS 27/28 (execution quality) and the cost & charges regime.

To illustrate the lack of benefits of these requirements we may mention the following to examples from the Swedish market.

One SSDA member with 900 000 clients have provided the following statistics:

- Best execution policies (downloaded 42 times during 2019)
- Best execution information (downloaded 33 times during 2019)
- RTS 28 information requirements to report on execution venues used (downloaded 48 times during 2019)

Another SSDA member has provided the following statistics on the cost & charges reports 2019:

- 1 168 944 reports were sent out to retail clients and small and middle size companies.
- During the period that the information was sent out, the webpage to which clients were referred for more information was visited by 36 144 clients (3 %)
- During the period that the information was sent out, the customer service received 500 calls from clients regarding the cost & charges reports (0.004 %)

According to SSDA, there are several parts of the MiFID II/MiFIR rules on investor protection that do not operate well together. There are several reasons for this:

- MiFID II/MiFIR have not been sufficiently calibrated for different types of financial instruments. In particular, the uniform approach causes an overload of information for products where the information has no value. For example, it is not reasonable that the detailed cost & charges rules apply in the same manner for pure investment products and hedging products (e.g. issues with percentage calculations and disclosure of cumulative effect of costs on return)

- Different types of clients have different needs of information. Professional clients and experienced retail clients have enough knowledge and experience to act on their own. On the other hand, REGULAR retail clients need more simple information than is currently provided according to MiFID II (e.g. total cost figure is more relevant than detailed itemised breakdowns).

- Conflicting and overlapping information requirements in EU, such as different disclosure regimes in MiFID II, PRIIPs and the Prospectus regulation. These rules make it difficult for clients to use the information to make an informed investment decision while creating liability concerns and high costs for investment firms

- Other inconsistencies e.g. what is a "cost" and "price" is interpreted differently in different parts of the MiFID/MiFIR framework such as SI-rules, RTS 27 and cost & charges rules.

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 corporate governance requirements	x		
Costs and charges requirements	x		
Conduct requirements			x
Other	x		

Please specify which other MiFID /MiFIR requirements should be amended.

The SSDA takes the view that a review should also include:

- Client categorization. The opt-up rules for retail clients in Annex II are not well-adapted for many types of instruments (see Q 40 and Q 41)

- Execution-only. In our view not all non-UCITS should be considered as complex per se. Many non-UCITS in Sweden (Sw. specialfonder) are simple products that are very similar to UCITS. Provided that the requirements in article 57 MiFID II delegated regulation are complied with, we see no reason why such products should not be distributed to retail clients. However, ESMA seems to have taken another view in its Q&A on investor protection and intermediaries, section 10 question 1 dated 6 June 2017. In some Member States this statement makes it more difficult for retail clients to access these simple products.

- Information to clients. The SSDA would support a general review of requirements in MiFID II/MiFIR regarding the format and timing for providing information to clients, including the concept of durable media and electronic communication,

- Inducements. The regime is far too complex and competent authorities in some Member States have provided different guidance and interpretations which means that the rules are implemented and enforced differently throughout EU.

- RTS 27 and RTS 28 (best execution reporting). The reporting requirements are too complex and do not fulfil their objective of providing clients with a tool for evaluating best execution. (See Q 55)

Question 32.1 Please explain your answer to question 32

In SSDA members experience, retail clients find the cost & charges information burdensome, difficult to understand and therefore they do not read the information received. Some clients are even discouraged to invest in financial instruments because the information is considered too complex and extensive. Moreover, both the product governance rules and cost & charges rules in MiFID II require that firms get data from third parties which often are not MiFID firms. If such data is not delivered, firms need to restrict access to the products. Moreover, the scope of the product governance rules should be revisited. The requirements do not make sense for simple non-packaged products such as shares and bonds which are traded on the secondary market.

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
x	3	Neutral
	4	Rather agree
	5	Fully agree

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 clients receive adequate

protection when purchasing products considered to be complex under MiFID II/MiFIR

The SSDA does not consider that more rules are needed for complex products.

Question 33.1 Please explain your answer to question 33

The current regime focuses on knowledge and experience assessments for complex products which the SSDA thinks is the right approach.

However, some simplifications could be made:

- Annex II to MiFID II should be revised in order to facilitate a more effective regime and allow experienced clients to opt-up and become professional clients (see Q 40 and 41).

- The treatment of all derivatives as complex products does not take into account that some are in fact only used for hedging purposes. i.e. to protect against risk and not as an investment. As a consequence, some of the investor protection requirements in MiFID II (such as the illustration of the cumulative effects on return, product governance, RTS 27, PRIIPs) make very little sense for OTC derivatives and the information could even be misleading for clients.

- Too many standard products are considered as complex. The SSDA considers that units in non-UCITS should not be considered as complex instruments if the requirements in article 57 MiFID II delegated regulation are complied with.

- The 10 % Loss Threshold Reporting for portfolio management (all clients) and leveraged instruments (only retail client), in article 62 MiFID II delegated regulation should be reviewed. In the experience of SSDA members these requirements are of limited value to clients who often also find the alerts very annoying to receive, in particular when trading on a more frequent basis. Our preferred solution would be to delete both requirements. The second-best alternative would be to introduce opt-out possibilities for more experienced clients.

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	x		
Only ECPs should be able to opt-out unilaterally			x
Professional clients and ECPs should be able to opt-out if specific conditions are met			x
All client categories should be able to opt-out if specific conditions are met	x		
Other	x		

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.

The SSDA supports an exemption for eligible counterparties (ECP) and professional clients from the ex-ante and ex post cost information obligations. As a second best option we support an opt-out regime which should be applicable to all types of professional clients (per se and elective). Moreover, we take the view that such opt-out possibilities should apply to all investment services (also investment advice and portfolio management)

For retail clients we agree that an opt-out possibility should be subject to certain conditions, for instance the provision of standardized information in the form of a table/grid. However, in order to facilitate for the more experienced and sophisticated segment of retail clients this measure should be combined with opt-up possibilities in annex II (On the need of revising these criteria, see Q 40 and Q 41).

Please explain your answer to question 34 and in particular the conditions that should apply.

In SSDA's view, the mandatory cost & charges disclosure regime for eligible counterparties and professional clients in MiFID II is not proportional. Such clients have sufficient knowledge and experience and are able to look after their own interest. In the experience of the SSDA, many such clients find it unhelpful to receive large volumes of MiFID data on costs, in particular as the calculation methodology does not always reflect market practice or applicable accounting principles. In this connection, we want to underline that is a problem that the cost & charges rules have not been developed with the characteristics of hedging products in mind and therefore require information to be published which makes no sense (e.g. information on the impact of cost on return).

In our members experience, also many retail clients do not want to receive the ex-ante information. In particular this applies to more sophisticated retail clients which trade frequently or to clients that enter into transactions by means of distance communication such as telephone. Therefore, SSDA thinks that also retail clients should be able to opt-out of the detailed information requirements under certain conditions. In combination with a possibility to opt-out one could consider to further analyse increased possibilities of using an initial price agreement/grid/list as a one-off disclosure towards the clients who choose to opt-out (See ESMA Q & A section 9 question 23).

As mentioned under Q 40 and Q 41 the SSDA is also in favor of revising the existing opt-up regime in order to facilitate a more effective regime for retail clients to opt-up as elective professional clients.

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

Question 35.1 Please explain your answer to question 35

The SSDA generally supports amendments to MiFID II which reduces the need for paper based information. Such development is in line with the digital transition of EU financial markets. Moreover, it should be possible for an investment firm to have as a part of their business model to only provide information electronically which in such case should be clarified to the client.

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	x		
General phase-out within the next 10 years		x	
For retail clients, an explicit opt-out of the client shall be required		x	
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information		x	
Other	x		

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

A short transition period may be granted, it could be even shorter than the suggested 5 years.

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-our, the cost saving potentially generated within your firm and whether operational conditions would be attached to it.

It is important that the transition allows some flexibility, taking into account the size and complexity of the investment firms, their business model and client base. The implementation will require substantial investments in client communication, IT and information systems, new processes and operational procedures. Some implementation costs may however be compensated by the diminishing costs of paper, printing, storage and postage.

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?

x	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

The SSDA does not see any need for such EU wide database.

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

	1 (irrelevant)	2 (rather not relevant	3 (neutral)	4 (rather relevant)	5 (fully relevant)	NA
All transferable securities						x
All products that have a PRIIPs KID/UCITS KIID)						x
Only PRIIPs						x
Other						x

Please specify what other products should be prioritized?

Question 38.1 Please explain your answer to question 38

The SSDA does not see any need for such EU wide database.

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

x	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

The SSDA does not see any need for such EU wide database.

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

Question 40.1 Please explain your answer to question 40

Many non-professional clients have the knowledge and experience to invest in financial instruments but are prevented from doing so due to their classification as retail clients under MiFID II. As a result, some sophisticated and experienced clients are not able to implement an investment strategy that is optimal for their needs. The SSDA therefore strongly support that this issue is addressed in a MiFID Review. In particular, the current opt-up regime in Annex II should be revisited.

- The most important aspect in the Annex II opt-up regime is whether or not a retail client has a good understanding of the investments. The criteria in Annex II should therefore focus on the client's knowledge rather than trading frequency and portfolio size thresholds. In particular:
    - The opt-up criterion trading frequency does not work in practice, given that it treats all instruments in the same manner and often cannot be used in practice. Looking at bond transactions or illiquid products, these are not in general traded at the level of frequency indicated. Furthermore, a criterion related to trading frequency carries a risk of creating incentives to increase the number of transactions so that the client can be reclassified. It is important that this type of criteria are not set up as a one size fits all approach, and they should rather be based on a division between instruments or instrument types and considering their categorisation as non-complex or complex instruments.
    - The criterion on knowledge/experience that relates to a person having worked in the financial industry is often irrelevant. The majority of professions within the industry does not mean that the client knows about specific products (e.g. an equities trader doesn't necessarily have knowledge about exchange traded products or bonds). It is more relevant whether the client understands the product and the risks involved. This requirement is also interpreted differently in different countries, which creates difficulties for firms and clients operating in multiple jurisdictions. It should be the investment firm's responsibility to be transparent and provide proper and not misleading information, but it should be the client's decision what to trade.
- Given that sophisticated retail clients are more like certain professional clients, there is currently an information overload. For example, the suitability report should be possible to opt out from – especially for non-complex products. A client that does multiple trades in equities based on investment advice, will get a suitability report for each trade. This creates unnecessary administrative burdens and many firms do have clients who do not want to receive the suitability report. In terms of documentation, an equities trade is followed by a trade confirmation and the broker commission is fully transparent for each trade.
- The lack of clarity regarding the scope of PRIIPs has led many manufacturers to restrict products to professional investors e.g. corporate bonds. The product governance regime has had similar consequences. It has effectively created an investor suitability obligation, not just at the point of sale (the approach taken in the past by regulation), but also imposing this obligation on issuers, underwriters, and secondary market sellers over the entire lifetime of the instrument. The practical burden of compliance with product governance has caused many EU-originated issues to refrain from placement of bonds to retail investors. It has also restricted secondary market access for retail investors as the prospectus for non-financial corporate bonds regularly includes a rider (based on ICMA standards) that the target market is eligible and professional investors only, even though the bonds as such are very simple in their construction (basic fixed or floating rate notes). This has created unwanted product offering restrictions on the MiFID distribution side when coupled with the current opt-op professional criteria. The letter from the ESAs

from 2018 on this topic was welcome, but the SSDA is after a more firm clarification through legislation and the response by the Commission to that letter did not suffice for the purpose of providing relevant certainty.

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
x	4	Rather agree
	5	Fully agree
	Don't know/no opinion/not relevant	

Question 41.1 Please explain your answer to question 41

The current MiFID II regime is not well-adapted to the needs of more experienced retail clients and we also see challenges in the way the opt-up mechanism has been implemented in its current form. We therefore encourage the Commission to revise Annex II to MiFID II with an aim to increase the possibilities for retail clients to opt-up as professional clients under certain conditions.

According to MiFID II, investment firms are allowed to treat clients as professional clients provided that certain requirements are fulfilled. However, those clients should not be presumed to possess market knowledge and experience comparable to that of clients that are professional clients per se. An adequate assessment of the expertise and knowledge of the client should be undertaken by the investment firm. The assessment should give the investment firm reasonable assurance, *in light of the nature of the transactions or services envisaged,* that the client is capable of making investment decisions and understanding the risks involved. Annex II, Section II.I of Mifid II refers to the fitness test applied to managers and directors of licenced entities as an example of the expertise and knowledge required to be treated as a professional client. Furthermore, two out of three specified criteria must be satisfied.

We propose that Annex II is amended to include also a reference to the provisions for assessment of suitability and appropriateness in article 55 of the delegated regulation for the assessment of the required expertise and knowledge.

Moreover, we agree that the size of the portfolio should be lowered. Should a portfolio size threshold be kept, it is important that a firm is able to consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).

Moreover, also the rrequirement regarding frequency of trading should be made subject to review. In this connection we refer to the comments made under Q 40.1. In this connection, it is important to consider the trading structure of different types of financial instruments. For illiquid instruments, such as corporate bonds, the requirement to trade in significant size more than "10 per quarter over the previous four quarters" is very difficult to fulfil. Since the lack of clarity around the PRIIPs scope and the products governance obligations have made many issuers limit the offerings to professional clients, this has had practical implications. It could therefore be considered to give ESMA a mandate to calibrate the trade frequency for different asset classes on level 2.

Furthermore, we propose changes to the three criteria in order for those criteria to better reflect that the nature of the service, the transaction and the financial instrument should be taken into account when making the assessment. The proposed wording is general in nature and may require further specification at some level.

In the third criteria we propose to include relevant education and to broaden the work experience to any sector provided that the position requires knowledge of the relevant service, transaction or instrument.

As a minimum, two of the following criteria shall be satisfied:

- The client has carried out transactions in significant size and frequency relevant to the specific service, transaction and financial instrument over a time period that is relevant for the specific service, transaction and financial instrument,

- The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds [EUR 200 000].
- The client has a relevant education or works or has worked, for at least one year, in a profession which requires knowledge of the services, transactions or financial instruments envisaged.

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
x	4	Rather agree
	5	Fully agree
	Don't know/no opinion/not relevant	

Question 42.1 Please explain your answer to question 42

The current MiFID II regime is not well-adapted to the needs of more experienced retail clients and we also see challenges in the way the opt-up mechanism has been implemented in its current form. We are very positive to include these considerations in a MiFID review.

However, we do see some challenges with the introduction of a new and additional semi-professional client category as this would require quite large IT system and process changes, as well as changes to the industry's self-regulation initiatives like the EMT etc.

An alternative solution which the SSDA would rather prefer would be to address these issues by adjusting the opt-up regime in Annex II (Q 40 and 41) which should be combined with the proposals to either exempt or to allow such clients to opt-out of information requirements.

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)	NA
Suitability or appropriateness test					x	
Information provided on cost & charges					x	
Product Governance					x	
Other					x	

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

The SSDA recognises the information requirement challenges with experienced retail clients and also see challenges in the way the opt-up mechanism has been implemented in its current form, as described under Q40.1.

If the Commission will not consider amendments to the opt-up regime in annex II and propose a semi-professional client category, we believe that also the following points are relevant:

- Ability to bear loss could be based on market conditions and at a given frequency rather than at each and every transaction.
- Removal of the requirement to produce a suitability report
- Removal of Loss Threshold Reporting for leveraged instruments (article 62 delegated regulation)
- Removal of the obligation to provide the client with PRIIPS KID/KIIDS.
- Only apply the product governance Target Market requirements in relation to products covered by PRIIPs and excluding bonds and equities.

Question 43.1 Please explain your answer to question 43

The current client classification regime with limited ability for retail clients with sufficient knowledge and experience to opt-up as professional clients limits their access to suitable instruments.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution p r o c e s s ?

Firms' infrastructures and the data exchange in the market are built on the basis of the existing three client categories. Therefore, an additional client category would need to be handled through system support, front line work and then the background quality control environment.

One-off implementation:

- Back-end infrastructure
- Data bases including both product and client data
- Front-end tools used when interacting with clients, such as investment advisory tools and trading platforms
- Client information packages, including terms & conditions and other forms
- Client reporting systems
- Data exchange processes, both internal within company groups as well as external due to self-regulatory initiatives like the EMT as an example

Recurring:

- Maintenance of all the above points. The introduction of a new client category would introduce a larger complexity which would carry maintenance costs
- Updates based on regulatory initiatives or supervisory activities

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

According to SSDA members changes to IT systems, reports, client documentation and internal guidance are mainly on-off. However, more complexity means more need to update documentation and more maintenance costs relating to more complex IT system.

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)	NA
Semi-professional clients should possess a minimum investable portfolio of a certain amount			x			
Semi-professional clients should be identified by a stricter financial knowledge test					x	
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise	x					
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					x	
Other						x

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

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 deleniate between retail and semi-professional clients

The SSDA recognises the information requirement challenges with experienced retail clients and also see challenges in the way the opt-up mechanism has been implemented in its current form, as described under Q40.1.

If the Commission will not consider amendments to the opt-up regime in annex II as described under 41.1 and propose a semi-professional client category, the SSDA takes the view that of the proposed criteria in Q 45, a stricter knowledge test and/or a one off suitability test are most relevant.

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

Question 46.1 Please explain your answer to question 46

Yes, in the experience of SSDA members, due to the product governance rules, some investment firms/platforms have restricted access to certain products based on other considerations than the products not being appropriate or suitable for them. One example is access to third country products (US ETF) and to products issued by non-MiFID firms which do not deliver the necessary product governance data and/or KIDs.

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)	x		
It should apply only to complex products			x
Other charges should be envisaged – please specify below	x		
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products		x	
Overall measures are appropriately calibrated, the main problem lie in the actual implementation		x	
The regime is adequately calibrated and overall, correctly applied		x	

Question 47.1 Please explain your answer to question 47

Yes, the SSDA strongly supports a simplification of the product governance rules.

One important area of improvement is the unclear distinction between product governance rules (which is an internal process of investment firms) and the rules on suitability and appropriateness (which are client facing). Changes should be made so that the rules more clearly separate product governance from issues which are in fact already regulated through the suitability and appropriateness rules. Moreover, the SSDA supports the overall approach that the product governance rules should only apply to financial products to which retail clients can have access to. However, such an overarching

change could potentially deprive retail clients of even more investment products, especially if no distinction between the product governance rules for producers of financial instruments and distributors of financial instruments is made. The reason behind this concern is that if producers only need to adhere to the product governance rules when a specific product have retail clients in its target market, it could incentivise the producer of that financial instrument to exclude retail clients in order to be alleviated from the administrative burdens the product governance rules entails. PRIIPs has made such an occurrence evident. Hence, if the Commission considers the first option, a thorough analysis needs to be conducted in order to ensure that any amendments do not unintendedly impair retail client's access to the financial market.

Another area relates to scope. The SSDA notes that the original proposal of product governance rules in MiFID II referred to "investment products". "Investment products" were defined with a reference to PRIIPs. However, since the PRIIPs regulation was delayed, the scope of the product governance rules in MiFID II changed to include all financial instruments and to other types of clients than retail clients. This has led to a lot of challenges to the market, for instance when applying the rules to non-packaged shares and bonds traded on the secondary market (recital 15 delegated directive). The SSDA welcomes if an analysis of the scope of the product governance rules is included in a MiFID Review and would support a proposal that limits the scope of the products to investment products covered by PRIIPs original scope i.e. excluding bonds and OTC-derivatives. Simple and non-packaged products such as shares and bonds which are traded on a venue should not be included in the product governance rules in MiFID II.

As regards comments to the compliance function, we refer to NSAs response to ESMAs consultation: https://www.fondhandlarna.se/files/2815/7114/3297/NSA_response_to_ESMA_CP_compliance_function_final.pdf

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?

x	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

If the question refers to a situation when a client asks to execute a trade in negative market and whether the distributing entity should execute the trade the answer is yes.

A trade by a professional client or an ECP, that has made an investment decision and that is informed about that they are in negative target market and has made the active decision to continue with the trade should be executed (see Q 47 relating to scope).

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
x	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

The SSDA refers to the NSA response for general comments on inducements.

Moreover, in its technical advice to the Commission relating to cost & charges disclosures, (points 23 and 24) ESMA states that placing fees and underwriting fees should be disclosed as inducements in accordance with article 24(9) MiFID II when the investment firm also provides an investment service to the investor buying the financial instruments it

is placing/sells the financial instruments issued to investors. ESMA also anticipates that further analysis might be appropriate in this area in the case of IPOs. The SSDA is concerned with this interpretation of MiFID II and the adverse impact it could have on EU capital markets.

Firstly, in our view, a fee received from the issuer client is a payment for the investment service rendered, i.e. underwriting and/or placing. This fee should not be considered as an inducement in relation to an investment client that buys the shares or bonds in question. In fact, if that were the case, then payments (e.g. brokerage fee) which the firms receive from the investment client should also be seen as an inducement in relation to the issuer, which obviously would not be reasonable. It must be possible under MiFID II to provide an investment service to one client without the renumeration for this service considered as an inducement in relation to another client.
Secondly, it should be underlined that the conflict of interest rules in MiFID II do apply in these situations. Thus, the investment firm must both identify and handle the conflict of interest arising between its business relationship with issuer and its relationship with investment clients (cf. organizational requirements such as Chinese walls and disclosures). In the event such measures would not be enough to avoid a negative impact on the clients´ interests the investment firm is obliged to explicitly inform the clients of the nature and source of the conflict of interest and the mitigating measures taken. Moreover, the investment firm is required to disclose information about the fee (%) to clients in accordance with the Prospectus Regulation. From an investor protection perspective, we therefore see little added value in considering this fee as an inducement since the relevant investor protection concerns are already covered by other EU-rules.
Thirdly, application of the inducement rules in MiFID II to issuer fees could give rise to a significant number of practical problems for investment firms, issuers and investor clients. For example, if the amount of the inducement is not known (which often is the case), the firm shall disclose to the investor client which methodology it uses for calculation and is also obliged to revert to the clients ex post with an exact amount. This would be a very technically complicated and administratively burdensome exercise of questionable benefit to the end-investor. There is also legal uncertainty which "quality enhancement" criteria could be applicable to the issuer fee (if any at all) and what the effect will be of the ban on inducement in relation to e.g. portfolio management services. A strict interpretation of the MiFID II seems to suggest that the investment firm would not be able to keep the issuer fee if this is seen as an inducement but be required to distribute it (pro rata?) to its portfolio management clients (article 41 delegated regulation). This can ultimately have adverse effects on the availability of services to companies for raising capital, which would be especially troublesome given the current market situation. It could also result in limiting the availability of possible investments in IPO:s and share issuances for retail clients.
Finally, it is important to consider the interpretation of the inducement rules to underwriting and placing services in the wider context of MiFID Review. For example, what would be the effect for underwriters and placing agents if the co-legislators agree on a full ban on inducements? Would this mean that an investment firm is no longer able to get paid for its underwriting and placement services? Such development would according to the SSDA not be in line with the COMs ambitions of a strong European Capital Market Union.

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

x	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

The SSDA is opposed to the introduction of an full inducements ban and does not see that it would improve the access to independent investment advice. (See also comments to Q 49 relating to our concern of what constitute an "inducement".)

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

x	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

The SSDA does not support a European wide certification. Such requirement should be defined rather at Member States level due to the national differences in product universe, use of investment products, education systems, tax environments etc.

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

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

Question 52.1 Please explain your answer to question 52

The SSDA does not support a European wide certification. Such requirement should be defined rather at Member States level due to the national differences in product universe, use of investment products, education systems, tax environments etc.

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

Question 53.1 Please explain your answer to question 53

The SSDA supports amendments to the effect that ex ante costs information should be able to be provided after the transaction, i.e. an alignment with PRIIPs and the rules on the suitability report. This should apply not just to telephone orders, but to all orders by distance communication methods as e.g. web-based client (video) negotiation, or other systems where orders are given electronically. We also support that retail clients should be able to receive standardised ex ante cost information in advance (eg grid/table). Wholesale clients should be exempted from ex ante cost requirements.

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

x	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

The SSDA considers taping to be an evidence tool rather than a "necessary tool to reduce the risk of product mis-selling".

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?

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

The SSDA supports that the RTS27 is abolished from the Best Execution framework, or at least significantly reduced in complexity, since it brings little value at a very large cost. If kept, we believe that a number of amendments to RTS 27 and RTS 28 should be made, see the NSA response for details.

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

	1 (irrelevant)	2 (rather not relevant	3 (neutral)	4 (rather relevant)	5 (fully relevant)	NA
Comprehensiveness					x	
Format of the data			x			
Quality of data					x	
Other						

The SSDA supports that the RTS27 is abolished from the Best Execution framework, or at least significantly reduced in complexity, since it brings little value at a very large cost. If kept, we believe that a number of amendments to RTS 27 and RTS 28 should be made, see the NSA response for details.

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?

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

The SSDA supports that the RTS27 is abolished from the Best Execution framework, or at least significantly reduced in complexity, since it brings little value at a very large cost.

If kept, we believe that a number of amendments to RTS 27 and RTS 28 should be made, see the NSA response for details.

Research unbundling and SME research coverage

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

In the Mifid II consultations unbundling was one of the most argued topics. Fear of declining research coverage was the top argument. The full effect of the unbundling has not yet materialised since equity market has been on all time high with record corporate action activity. Despite this it is clear thar coverage is declining and prices are continously coming down. When we see a weaker market this trend will accelarate and further reductions of coverage and quality will be the effect. It is therefore important that steps are taken to improve the situation to prevent a drastic drop in especially SME research coverage.

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)	NA
Introduce a specific definition of research in MiFID II level 1		x				
Authorise bundling for SME research exclusively			x			
Exclude independent research from Article 13 of delegated Directive 2017/593	x					
Prevent underpricing in research	x					
Amend rules on free trial periods of research			x			
Other						

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

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:

The SSDA believes that market-based solutions are to be preferred. The SSDA thinks that both bundling of SME research and development of issuer sponsored research are wothwhile to investigate and promote. Both could prevent furhter reductions in research coverage. Underpricing of research is very difficult to prevent in practice since research is one part of a bundled service.

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

x	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:

Question 60.1 Please explain your answer to question 60

The SSDA believes quality research is best produced under commercial business conditions with competition.

Question 61. If SME research were to be subsidized 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?

The SSDA believes quality research is best produced under commercial business conditions with competition.

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

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

Question 62.1 Please explain your answer to question 62

The SSDA does not believe AI can generate quality research on its own. It can be very useful for data and information gathering. It could be a complementry product, but must in that case be labelled as such.

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

Question 63.1 If you 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.

Question 63.1 Please explain your answer to question 63

A public database could be of some use, but the SSDA has some concerns regarding cost benefit since there are other providers already. Data quality would also be important.

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
x	Don't know/no opinion/not relevant	

Question 64.1 Please explain your answer to question 64

If such database were to be developed ESMA could be one candidate. Important that data quality and cost benefit issues are resolved before any initiatives are taken

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

Question 65.1 Please explain your answer to question 65

The SSDA agrees as long as the relationship between issuer and investment firm is clearly stated.

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

x	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

The SSDA believes issuer-sponsored research is a complementary product and does not qualify as investment research as defined in article 36.

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

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

Question 67.1 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

Question 67.1 Please explain your answer to question 67

The SSDA is of the opinion that the rules applicable to issuer-sponsored research could be amended to address the conflicts of interest. Such amendments could be disclosure requirements such as the relationship between the issuer and the provider of the research must be clearly stated, no target price, no recommendation, and it must be clearly labelled as issuer sponsored research.

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

	1 (irrelevant)	2 (rather not relevant	3 (neutral)	4 (rather relevant)	5 (fully relevant)	NA
Introduce a specific definition of research in MiFID level 1		x				
Authorise bundling for SME research exclusively			x			
Exclude independent research from Article 13 of delegated Directive 2017/593	x					
Prevent underpricing in research	x					
Amend rules on free trial periods of research			x			
Create a program to finance SME research set up by market operators	x					
Fund SME research partially with public money	x					
Promote research on SME produced by artificial intelligence			x			
Create an EU-wide database on SME research		x				
Amend rules on issuer sponsored research				x		
Other						

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

Question 68.1 Please explain your answer to question 68

The SSDA believes research should be produced on a commercial basis and that is valid for SME research as well. Policy options should therefore help foster business models that make SME research profitable long term. Bundling of SME research might be one solution to investigate further, but could be difficult in practice. One idea could be to "earmark" a part of the research budget for SME research.

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)	NA
The EU intervention has been successful in achieving or pro-		x				

gressing towards more transparency and competition in trading of instruments subject to the DTO						
The MiFID/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)			x			
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO			x			
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in the EU financial markets			x			
The DTO has provided EU added value		x				

The SSDA members do not have much experience form the DTO and have difficulties to see the added value at this point in time.

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
x	4	Rather agree
	5	Fully agree
	Don't know/no opinion/not relevant	

The SSDA is not certain that we understand the question. We do agree that there are reasons to look into Brexit implications e.g. to avoid a possible collision between EU and UK derivative trading obligations.

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

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

The SSDA is not in favor of including more instruments in DTO at this point in time.

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

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

To our knowledge there are no SI networks in the Nordics. Nordic SIs are bilateral and take risk when executing clients orders against their own account.

Double Volume Cap

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)	NA
The EU intervention has been successful in achieving or progressing towards the objective of more transparency in share trading	x					
The MiFID/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden)	x					
The different components of the framework operate well together to achieve more transparency in share trading	x					
More transparency in share trading corresponds with the needs and problems in the EU financial markets	x					
The DVC has provided EU added value	x					

The SSDA is of the strong opinion that the DVC should be removed, as the cap is an unnecessarily complicated instrument. If it is kept at least the Negotiated Trade Waiver (NTW), should not be limited in usage as this waiver is an important tool not at least in smaller markets and markets with lower liquidity levels and indeed to the benefit of both retail clients and institutions. There are no signs that the NTW has been a source of misuse as the case has been for the Reference Price Waiver (RPW).

Digitalisation and new technologies

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

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?

The SSDA does not think it is appropriate to include non-financial instruments in Mi-FIDII/MiFIR. FX spot market is better dealt with by ACI Global Code of Conduct.
