Contribution ID: 03fba34e-9460-4b2b-b03b-e2cc53a36429
Date: 18/05/2020 19:42:28

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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

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

* I am giving my contribution as

- ○ Academic/research institution
- ○ Business association
- ◉ Company/business organisation
- ○ Consumer organisation
- ○ EU citizen
- ○ Environmental organisation
- ○ Non-EU citizen
- ○ Non-governmental organisation (NGO)
- ○ Public authority
- ○ Trade union
- ○ Other

* First name

sara

* Surname

MITELMAN

* Email (this won't be published)

sara@fondhandlarna.se

* Organisation name

255 character(s) maximum

Swedish Securities Dealers Association (SSDA)

* Organisation size

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

Transparency register number

255 character(s) maximum

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

7777147632-40

* Country of origin

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

- ( ) Afghanistan
- ( ) Åland Islands
- ( ) Albania
- ( ) Algeria
- ( ) American Samoa
- ( ) Andorra
- ( ) Angola
- ( ) Anguilla
- ( ) Antarctica
- ( ) Antigua and Barbuda
- ( ) Djibouti
- ( ) Dominica
- ( ) Dominican Republic
- ( ) Ecuador
- ( ) Egypt
- ( ) El Salvador
- ( ) Equatorial Guinea
- ( ) Eritrea
- ( ) Estonia
- ( ) Eswatini
- ( ) Libya
- ( ) Liechtenstein
- ( ) Lithuania
- ( ) Luxembourg
- ( ) Macau
- ( ) Madagascar
- ( ) Malawi
- ( ) Malaysia
- ( ) Maldives
- ( ) Mali
- ( ) Saint Martin
- ( ) Saint Pierre and Miquelon
- ( ) Saint Vincent and the Grenadines
- ( ) Samoa
- ( ) San Marino
- ( ) São Tomé and Príncipe
- ( ) Saudi Arabia
- ( ) Senegal
- ( ) Serbia
- ( ) Seychelles

- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey

- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

Trade association for investment firms

* Publication privacy settings

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

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

- [x] I agree with the personal data protection provisions

Choose your questionnaire

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

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

The **full version** comprises 87 additional questions addressing **more technical features**.
The full questionnaire is only available in English.

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

- [x] I want to respond to the **full version** of the questionnaire

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

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

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

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The 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 re-introduce 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 /MiFIR framework?

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
- 2 - Not really
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don’t know / no opinion / not relevant

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
- 3 - Neutral
- 4 - Partially
- 5 - Totally
- Don’t know / no opinion / not relevant

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

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

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

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

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

Question 6.1 If you have identified such barriers, please explain what they would be:

5000 character(s) maximum

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

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.

Section 2. Specific questions on the existing regulatory framework

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

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

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade information). MiFID II /MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments. This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g.

shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II /MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

I. The establishment of an EU consolidated tape[1]

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No demand for it.

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

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

Please explain your answer:

5000 character(s) maximum

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

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

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

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.

1.3. Use cases for a consolidated tape

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

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

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

5000 character(s) maximum

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

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.

2. General features of the consolidated tape

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

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

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

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.
- **What should be the latency of the tape**: Many stakeholders argue that the tape should be “real-time”, implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds (“fast as the eye can see”). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT

revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	○	○	○	○	◉	○
Mandatory contributions	○	○	○	○	◉	○
Mandatory consumption	◉	○	○	○	○	○
Full coverage	○	○	○	○	◉	○
Very high coverage (not lower than 90% of the market)	◉	○	○	○	○	○
Real-time (minimum standards on latency)	○	○	○	○	○	◉
The existence of an order protection rule	◉	○	○	○	○	○
Single provider per asset class	◉	○	○	○	○	○
Strong governance framework	○	○	○	○	◉	○
Other	○	○	◉	○	○	○

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 organised:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA does not support mandatory consumption.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade[3]	◉	○	○	○	○	○
Shares post-trade	○	○	○	◉	○	○
ETFs pre-trade	◉	○	○	○	○	○
ETFs post-trade	○	○	○	◉	○	○
Corporate bonds pre-trade	◉	○	○	○	○	○
Corporate bonds post-trade	○	○	○	◉	○	○
Government bonds pre-trade	◉	○	○	○	○	○

Government bonds post-trade	○	○	○	◉	○	○
Interest rate swaps pre-trade	◉	○	○	○	○	○
Interest rate swaps post-trade	◉	○	○	○	○	○
Credit default swaps pre-trade	◉	○	○	○	○	○
Credit default swaps post-trade	◉	○	○	○	○	○
Other	○	○	○	◉	○	○

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Covered bonds post trade
Equity derivatives, post trade
IBOR fixing

Question 15.1 Please explain your answers to question 15:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 assess-ment 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.

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA thinks a CT will be of limited use and pre trade is definitely out of the question. If a post trade tape is created the following information should be included:

- Trade price
- Trade size
- Timestamp
- Trade type
- Venue
- Deferral flags
- Instrument ID
- MMT flags

Information on a CT should be kept to a minimum and only include necessary information listed above.

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

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

Shares

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares admitted to trading on a RM	○	○	○	○	◉	○
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	○	○	○	○	◉	○
Other	◉	○	○	○	○	○

Question 17.1 Please explain your answers to question 17:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

According to the SSDA, there should be no flexibility.

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

4.1. Equity trading and price formation

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Question 22.1 Please explain your answer to question 22:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Maintain the STO (status quo)	○	○	○	○	◉	○
Maintain the STO with adjustments (please specify)	◉	○	○	○	○	○
Repeal the STO altogether	○	○	○	○	◉	○

Question 23.1 Please explain your answers to question 23:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
SIs should keep the same current status under the STO	○	○	○	○	◉	○
SIs should no longer be eligible execution venues under the STO	◉	○	○	○	○	○

Other						

Question 24.1 Please explain your answers to question 24:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

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

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

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

Question 29.1 Please explain your answer to question 29:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

4.3. Post-trade transparency regime for non-equities

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

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

		2		4	5	

	1 (disagree)	(rather not agree)	3 (neutral)	(rather agree)	(fully agree)	N. A.
Abolition of post-trade transparency deferrals	◉	○	○	○	○	○
Shortening of the 2-day deferral period for the price information	◉	○	○	○	○	○
Shortening of the 4-week deferral period for the volume information	◉	○	○	○	○	○
Harmonisation of national deferral regimes	○	○	○	○	◉	○
Keeping the current regime	○	◉	○	○	○	○
Other	○	○	○	○	○	○

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

II. Investor protection[4]

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

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	○	○	○	◉	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	◉	○	○	○	○	○
The different components of the framework operate well together to achieve more investor protection.	◉	○	○	○	○	○
More investor protection corresponds with the needs and problems in EU financial markets.	◉	○	○	○	○	○
The investor protection rules in MiFID II/MiFIR have provided EU added value.	○	◉	○	○	○	○

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 governance requirements	◉	○	○
Costs and charges requirements	◉	○	○
Conduct requirements	○	○	◉
Other	◉	○	○

1. Easier access to simple and transparent products

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 del-egated 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 cli-ents, 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 eval-uating best execution. (See Q 55)

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Question 33.1 Please explain your answer to question 33:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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.

2. Relevance and accessibility of adequate information

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

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

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

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	◉	○	○
Only ECPs should be able to opt-out unilaterally.	○	○	◉
Professional clients and ECPs should be able to opt-out if specific conditions are met.	○	○	◉
All client categories should be able to opt out if specific conditions are met.	◉	○	○
Other	◉	○	○

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?

5000 character(s) maximum

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

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).

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

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

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

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

- 4 - Rather support
- 5 - Support completely
- Don’t know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

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

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

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

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	( )	( )	( )	( )	( )	(●)
All products that have a PRIIPs KID/ UICTS KIID	( )	( )	( )	( )	( )	(●)

Only PRIIPs	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Question 38.1 Please explain your answer to question 38:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

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

Question 39.1 Please explain your answer to question 39:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

3. Client profiling and classification

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

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

[6] According to the CMU-NEXT group "HNW investors" could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

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

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

Question 40.1 Please explain your answer to question 40:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In SSDA's members experience, 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:
o 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.
o The criterion on knowledge/experience that relates to a person having worked in the financial industry is often irrelevant. The majority of profes-sions 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 juris-dictions. 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 dis-tribution 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
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 41.1 Please explain your answer to question 41:

5000 character(s) maximum

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

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 in-ternal 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 requirement 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 con-nection, it is important to consider the trading structure of different types of financial in-struments. 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 finan-cial 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
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Question 42.1 Please explain your answer to question 42:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 re-quirements.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test	○	○	○	○	◉	○
Information provided on costs and charges	○	○	○	○	◉	○
Product governance	○	○	○	○	◉	○
Other	○	○	○	○	◉	○

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA recognises the information requirement challenges with experienced retail clients and also see challenges in the way the opt-up mechanism has been implement-ed 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 frequen-cy 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 dele-gated 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:

5000 character(s) maximum

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

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 suita-ble 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 process?

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	○	○	◉	○	○	○
Semi-professional clients should be identified by a stricter financial knowledge test.	○	○	○	○	◉	○
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	◉	○	○	○	○	○
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.	○	○	○	○	◉	○
Other	○	○	○	○	○	◉

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA recognises the information requirement challenges with experienced retail clients and also see challenges in the way the opt-up mechanism has been implement-ed 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.

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 gov-ernance 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

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

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

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

Question 48.1 Please explain your answer to question 48:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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).

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

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

- ( ) 1 - Disagree

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

Question 49.1 Please explain your answer to question 49:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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. 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 cli-ents´ 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 accord-ance with the Prospectus Regulation. From an investor protection perspective, we there-fore 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 inter-pretation 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 issu-ances 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.

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 50.1 Please explain your answer to question 50:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 constitutes an “inducement”.)

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( )

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

Question 51.1 Please explain your answer to question 51:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

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

Question 52.1 Please explain your answer to question 52:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

5. Distance communication

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

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

1 - Disagree

- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (•) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

- (•) 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA considers taping to be an evidence tool rather than a “necessary tool to re-duce the risk of product mis-selling”.

6. Reporting on best execution

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

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

- (●) 1 - Disagree
- ( ) 2 - Rather not agree
- ( ) 3 - Neutral
- ( ) 4 - Rather agree
- ( ) 5 - Fully agree
- ( ) Don’t know / no opinion / not relevant

Question 55.1 Please explain your answer to question 55:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA supports that the RTS 27 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)	N.A.
Comprehensiveness	○	○	○	○	◉	○
Format of the data	○	○	◉	○	○	○
Quality of data	○	○	○	○	◉	○
Other	○	○	○	○	○	○

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA supports that the RTS 27 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?

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

Question 57.1 Please explain your answer to question 57:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA supports that the RTS 27 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.

III. Research unbundling rules and SME research coverage[7]

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

1.2. Alternative ways of financing SMEs research

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

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

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

Don’t know / no opinion / not relevant

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

- 1 - Disagree
- 2 - Rather not agree
- (•) 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

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.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
- Don’t know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- (●) 5 - Fully agree
- Don’t know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The 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?

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

Don’t know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

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

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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 re-quirements 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 la-belled as issuer sponsored research.

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

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

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

IV. Commodity markets[8]

As part of the effort to foster more **commodity derivatives trading denominated in euros**, rules on pre-trade transparency and on position limits could be recalibrated (to establish for instance higher levels of open interest before the limit is triggered) to facilitate nascent euro-denominated commodity derivatives contracts. For example, Level 1 could contain a specific requirement that a nascent market must benefit from more relaxed (higher) limits before a positon has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

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

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

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

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

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

	1	2	3	4	5	

	(disagree)	(rather not agree)	(neutral)	(rather agree)	(fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	○	○	○	○	○
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	○	○	○	○	○	○
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	○	○	○	○	○	○
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	○	○	○	○	○	○
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	○	○	○	○	○	○

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

	1 (most appropriate)	2 (neutral)	3 (least appropriate)	N.A.
Current scope				
A designated list of 'critical' contracts similar to the US regime				
Other				

Question 71.1 Please explain your answer to question 71:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Question 73.1 Please explain your answer to question 73:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

	Yes	No	N.A.
Nascent	○	○	○
Illiquid	○	○	○
Other	○	○	○

Question 74.1 Please explain your answer to question 74:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

	Yes	No	N.A.
A financial counterparty belonging to a predominantly commercial group that hedges positions held by a non-financial entity belonging to the same group	○	○	○
A financial counterparty	○	○	○
Other	○	○	○

Question 75.1 Please explain your answer to question 75:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

[9] The review clause in Article 52 paragraph (6) of MiFIR is covered by this section.

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
- ◉ 4 - Rather agree
- ○ 5 - Fully agree
- ○ Don’t know / no opinion / not relevant

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

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
- ◉ 4 - Rather agree
- ○ 5 - Fully agree
- ○ Don’t know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA is not in favor of including more instruments in DTO.

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

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

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

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VI. Multilateral systems

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

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients' relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system. However, according to traditional trading venues, this

alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MIFID II/MiFIR provisions. There is a debate whether MiFID II /MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

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

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

Question 81.1 Please explain your answer to question 81:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

VII. Double Volume Cap[10]

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards the objective of more transparency in share trading.	◉	○	○	○	○	○
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	◉	○	○	○	○	○
The different components of the framework operate well together to achieve more transparency in share trading.	◉	○	○	○	○	○
More transparency in share trading correspond with the needs and problems in EU financial markets.	◉	○	○	○	○	○
The DVC has provided EU added value	◉	○	○	○	○	○

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SSDA is of the strong opinion that the DVC should be removed, as the cap is an un-necessarily 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).

VIII. Non-discriminatory access[11]

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

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

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

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

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

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

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

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

- Don’t know / no opinion / not relevant

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

Please explain your reasoning and specify which countries:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

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

Question 89.1 Please explain your answer to question 89:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Please explain your answer:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-mifid-2-mifir-review_e

Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

Consultation document (https://ec.europa.eu/info/files/2020-mifid-2-mifir-review-consultation-document_en)

Contact

fisma-mifid-r-review@ec.europa.eu