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Finance for Europe

# Integration of EU Capital Markets

**AFME response to European Commission Consultation – Full Submission**

JUNE 2025

## 1. Simplification and burden reduction

1) Is there a need for greater proportionality in the EU regulatory framework related to the trade, post- trade, asset management and funds sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If yes, please explain and provide suggestion on what form it should take.

SCORE: 1

Please, explain

We strongly believe that the EU financial services regulatory framework needs to further take into account the principle of proportionality. We call on the European Commission and co-legislators to ensure that this principle is effectively applied. Over the last decade, the EU financial services' acquis has grown significantly leading to a normative inflation not only at level 1 but also through levels 2 and 3 regulatory products without considering sufficiently whether these acts do focus on their core objectives, apply in a coherent manner, and mitigate the costs incurred by market participants.

We recommend that the Commission and ESAs' engage at an early stage of their reflections with the industry in a transparent and structured manner so market actors can contribute usefully to a comprehensive understanding of the impact of regulatory initiatives. It is important that stakeholders can exchange in a timely fashion with regulators on the relevance of policy objectives and how regulatory initiatives can be achieved with the minimum impact on financial institutions which negatively affect not only their competitiveness but also of their clients.

The Commission has also recently launched 'Call for evidence for an impact assessment'. While seeking stakeholders' views to inform impact assessment goes in the right direction, our view is that the industry is not in a position to effectively contribute to this exercise. To be able to do so, the Commission should make the policy options clear and available so further quantitative and qualitative evidence can be provided to the Commission.

Finally, we would be supportive of a mechanism to assess the consequences of amendments during the legislative process. This mechanism could focus on 'high impact' amendments. We would also encourage EU institutions to put in place a similar mechanism to assess the impact of the final text resulting from the legislative process.

More specifically, we believe that further proportionality could be achieved, for example, in the following areas:

- Remove the volume cap – the EU is a global outlier in applying a volume-based constraint on 'dark' trading, which restricts investor choice and adds significant operational cost and complexity. Other jurisdictions which have removed volume caps, such as the UK, observe no material change in levels of dark trading post-removal.
- Remove the Share Trading Obligation – the STO limits the ability of investment firms to execute trades on the optimal trading mechanism for their clients. Other MiFID requirements are effective in directing activity towards platforms providing market transparency (including RMs, MTFs and SIs) without the need for the STO.

More broadly, there is scope for simplification of the current regulatory reporting framework which has been established in piecemeal fashion. The Commission's renewed focus on burden reduction, including in the context of SIU, creates an opportunity to review areas where the regulatory burden on market participants could be alleviated without compromising the oversight role performed by regulatory bodies through regulatory reporting

data.

2) In particular, in relation to question 1 above, should the AIFMD threshold for sub-threshold AIFMs take into consideration for instance the market evolution and/or the cumulated inflation over the last 10-15 years? Please provide your answer by choosing from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'.

Not answered

3) Would you see a need for introducing greater proportionality in the rules applying to smaller fund managers under Alternative Investment Fund Managers Directive (AIFMD),? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestion on what form it should take, indicating if possible estimates of the resulting cost savings.

Not answered

4) Are there any barriers that could be addressed by turning (certain provisions of) the Alternative Investment Fund Managers Directive (AIFMD), Financial Collateral Directive (FCD), Markets in Financial Instruments Directive (MiFID), Undertakings for Collective Investment in Transferable Securities Directive (UCITSD), Settlement Finality Directive (SFD) into a Regulation? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain which barriers and how a Regulation could remove the barrier.

SCORE: 2

Please explain

AFME supports the systematic use of Regulation over Directive. EU regulations deliver a higher degree of harmonisation across Member States, ensure level playing field, and reduce compliance costs for market participants. However, turning existing legislation enshrined in a directive into a regulation may be a complex process. We will therefore encourage the Commission to carefully assess the potential benefits and downsides of reopening a directive to ensure it is commensurate with the seriousness of the issue(s) at stake and that there are no other means to achieve a similar outcome. It is indeed also important that market participants evolve into a stable and predictable regulatory environment.

For example, and acknowledging it does not directly fall within the remit of DG FISMA while being among the potential measures outlined in the SIU strategy, AFME advocates for turning the Shareholder Rights Directive (SRD) into a Regulation to ensure consistent and harmonised implementation across EU member states. The directive falls short of delivering a single pan-European legal or operational framework. AFME believes that a regulation would provide the necessary legal certainty to support a unified shareholder identification process and establish a pan-European definition of 'shareholder' applicable to all European securities. The current lack of harmonisation leads to significant practical challenges. This legal fragmentation undermines the attractiveness of EU capital markets and often incentivises reliance on non-EU legal frameworks.

5) Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also if possible present estimates of the resulting cost savings.

SCORE: 1

Please explain

We strongly agree that a more coherent framework is a powerful way to deliver on the simplification agenda, which is a key commitment of this Commission. One example that we would like to bring to your attention to illustrate this point relates to the multiple set of rules that custodian banks must navigate through. These requirements are set out in different pieces of European legislation, including MiFID, AIFMD/UCITS, DORA, CSDR, CRR, CRDV, and MiCA.

AFME believes that there would be major benefits in simplifying these regulatory frameworks, thereby avoiding duplication and inconsistencies in the requirements custodian banks must comply with.

We would, for example, strongly support reforms that would merge the rules on custody services set out in AIFMD/UCITS with the MiFID rules on custody services. Some actions could also be envisaged via levels 2 and 3 acts.

6) Would the key information documents for packaged retail and insurance-based investment products (PRIIPs KID) benefit from being streamlined and simplified? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also indicate what should be prioritised and if possible present estimates of the resulting cost savings.

SCORE: 5

Please explain

The PRIIPs KID would not, in our view, benefit from being streamlined and simplified. In our experience, the KID is now satisfactorily understood by retail investors and stakeholders. Even if not perfect, considering the objectives of having harmonised and prescriptive set of rules for all packaged investment products and to make them as suitable as possible for retail investors, we consider that the current KID achieves those objectives. Considering that the regulatory framework has been substantially reviewed multiple time in the last years, we would favour regulatory stability and outline that successive set of changes of the framework is costly, disruptive, and therefore, inefficient. At the very least, any proposal for changes of both content and format should demonstrate significant improvement of the KID for retail investors, based on a comprehensive consumer testing, and industry consultation on a wide and representative sample of products. Implementation costs of PRIIPs KID since 2018 have been considerable, and the PRIIPs KID review of scenario and cost table applicable since 1/1/2023 caused further implementation costs.

Also, please note that an AFME member has reported the number of client complaints received from retail investors on KID's PRIIPs has been decreasing from 2020 to 2025, from less than 30 to less than 2 complaints, for over 3000 products issued in average per year.

We do, however, urge the EC to reconsider whether certain OTC products should be within scope of the EU PRIIPs regime. We strongly disagree that the KIDs are necessary or useful for OTC products transacted with corporate customers. In particular, the indicative KIDs for FX transactions (Forwards, Swaps, NDFs etc) as they are expensive to generate, and are never reviewed by clients (who often self-book their trades). We understand that customers may consider that the KIDs do not contain additional information pertinent to their decision-making process (e.g. compared to that contained in any term sheets or other materials that may be available to them).

7) Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?

Yes / no / no opinion

In our view, the simplification agenda would also deserve a thorough reflection on the best way to simplify the EU rule making procedure. We believe that the simplification agenda is an opportunity to conduct an in-depth review

of the Lamfalussy architecture introduced in 2001 as part of the post-crisis reforms. It is indeed time to initiate a workstream to improve how EU rules are being developed and implemented to ensure a harmonised and coherent regulatory framework. Please also see our response to question 7.1 (1).

8) Does the EU trade, post-trade, asset management or funds framework apply disproportionate burdens or restrictions on the use of new technologies and innovation in these sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. Please explain and provide examples.

SCORE: 3

Please explain

The current post-trade regulatory framework impedes the adoption of innovative technologies such as Distributed Ledger Technology (DLT). These unnecessary barriers limit the ability to fully harness DLT's potential to enhance the safety and efficiency of settlement processes and securities lifecycle events. DLT can broaden access to capital markets by enabling the issuance and trading of tokenised securities and assets, opening participation to a wider range of investors. To unlock these benefits, several key actions are required:

- Reviewing the DLT pilot regime - Enhance attractiveness by eliminating limits, broadening eligibility for DLT-based settlement systems, and provide a clear, accommodative, and permanent regime
- Central bank collateral eligibility - DLT-based securities should be able to qualify as central bank collateral.
- Explore unbundling of CSD core services at functional level (in line with the UK Digital Securities Sandbox approach) to allow for the development of regulated decentralised settlement where core CSD services (e.g. settlement, central maintenance of securities accounts, notary) are regulated by function and can be performed by different eligible actors.
- Development of solutions for allowing wholesale financial transactions recorded on DLT platforms to be settled in central bank money. AFME supports the ECB's exploratory work - including trials and experiments – to develop a link between DLT-based capital markets and central bank money settlement., which is key to enable risk-free settlement.
- Explore other incentives to promote DLT-based issuances, including DLT-based bond grant subsidy schemes. Other jurisdictions (e.g. HK) have pursued public policy initiatives like. This can help market participants with investing in innovation.

9) Would more EU level supervision contribute to the aim of simplification and burden reduction? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion' and explain.

SCORE: 2

Please explain

At high-level, we think a more integrated supervisory architecture would be on balance a positive development and can contribute to reducing complexity and burden reduction as a more integrated supervisory architecture should act as an enabling factor for the consistent application of the single rulebook. However, we believe that such outcome cannot go without the reforms of the ESAs related to their governance, objectives, and powers. For further details, please see our responses to questions 7.1 (1) and 7.1 (6).

# 2. Trading

## 2.1. Nature of barriers to integration, modernisation of liquidity pools

1) On a scale from 1 (absent) to 5 (efficient), what is your assessment of the current level of integration of liquidity pools across the EU?

SCORE: 4

If you responded 4 or below to the previous question, what are the barriers that limit the level of integration of liquidity pools in the EU? Please select the relevant items.

| | Please select the relevant items |
|---|---|
| Legal/regulatory barriers at EU level; | |
| Legal/regulatory barriers at domestic level (including also insolvency law, tax, etc., and including barriers resulting from goldplating of EU law); | X |
| Non-regulatory barriers (market practices); | X |
| Supervisory practices; | X |
| Other barriers (please specify) | X |

Please explain

In the context of **equities markets**, we consider that liquidity is well integrated across different liquidity pools, with intermediaries playing a critical role in providing connectivity to, and choice of, execution mechanisms.

From a wholesale markets perspective in particular, the market has largely solved for the challenge of cross-border integration at the trading level – for example through the development of tools such as smart order routers which help to efficiently achieve best execution on client orders.

However, as explained below in our response to Section 3, there remains scope for further harmonisation of EU post trade infrastructure, which would in turn help support more integrated cross-border demand for, and access to, pools of liquidity. In particular, we consider that the fragmented and complex post trade landscape creates significant additional frictional costs for transacting in the EU, especially for retail investors and smaller market players where post-trade related costs may represent an even higher proportion of all-in transactional costs. We therefore recommend prioritising legislative action to address this post trade fragmentation.

Furthermore, from the perspective of **Fixed Income market(s)**, we note that these markers, both in the EU, and globally, operate under an entirely different structure to that of equity markets. Regarding connection and access everything is working well in markets and trading, including the best execution framework which is serving its purpose in Europe. Owing largely to the relative illiquidity of fixed income securities, the infrequency of trades in them, the relatively large size of individual trades and the dominance of institutions vs retail, the market overwhelmingly trades on an OTC or electronic Request For Quote (RFQ) basis. Price and trade enquiries happen largely on a name disclosed basis with executed trades negotiated and settled bilaterally.

In contrast to equity markets that trade mostly on anonymous, individual Central Limit Order Book (CLOB) constructs around which liquidity from all market participants congregates, liquidity in fixed income markets is derived mainly from dedicated market makers that provide liquidity to their clients on a name disclosed, bilateral and principal basis. For this reason, MTF electronic trading venues operate more like ***conduits to*** the liquidity providing market makers than individual sources of liquidity themselves as is the case with CLOB structures in

equities.

It is for this reason that some of the themes in this consultation paper are not particularly relevant to fixed income. For example, the theme of connectivity between trading venues with the objective of essentially pooling the liquidity between each venue is not relevant because MTFs mainly act as conduits to other, external ultimate sources of that liquidity i.e. the market makers. So, the elements affecting choice of which MTF investor clients wish to use are more to do with slight differences in trading protocols between the much smaller number of platforms and other more nuanced platform characteristics than the availability and scale of liquidity *per se* since they mostly all have connectivity to the same ultimate sources of liquidity – the market makers.

However, we note there are some questions in the trading section of this consultation that are relevant when looked at from a fixed income perspective and we will therefore answer those questions from a fixed income perspective, too.

2) Please provide concrete examples of the identified barriers. In case of legal barriers (excluding on the "group operations" dealt with in the section on horizontal barriers), please indicate the relevant provisions.

Where possible, please provide an estimate of resulting additional costs and/or impacts on execution quality.

**Domestic Barriers:**
Withholding tax regime: Existing operational challenges in collecting withholding taxes and processing Double Tax Treaty refunds should be addressed. The recently adopted EU FASTER proposal is a positive first step in harmonising withholding tax procedures and minimising complexities and associated costs. However, there are further opportunities for simplification and harmonisation, for example through a clear and common definition of beneficial ownership.

**Market Practice Barriers:**
Equity Trading hours / Auction lengths/timings: There is currently a lack of standardisation with respect to the operating hours of EU trading venues, which adds a degree of complexity for market participants. We would support industry-driven initiatives for convergence where there is evidence of relevant market demand.

**Supervisory Barriers:**
There is scope for greater harmonisation in approaches across different NCAs – for example, differences have been observed in regulators' interpretation of existing rules and approval processes.

**Post-trading Barriers:**
As outlined in detail in our responses to Section 3, the fragmented and complex post trade landscape represents a major barrier and creates significant additional frictional costs for transacting in the EU in comparison to other jurisdictions. There are significant interlinkages between trading and post-trading and a "siloed" approach should be avoided. In principle, we believe that the trading location should not constrain user choice in the place of clearing and settlement.

## 2.2. Regulatory barriers to cross-border operations in the trading space

3) On a scale from 1 to 5 (1 being "insufficient" and 5 being "fully harmonised"), what is your assessment of the current level of harmonisation of EU rules applicable to:

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|---|
| Regulated markets and their operators. | | | | | X | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Other trading venues and their operators. | | | | | X | |
| The provision of execution of orders on behalf of clients. | | | | | X | |
| The provision of reception and transmission of orders. | | | | | X | |

4) For which areas do you believe that further harmonisation would be beneficial (multiple choices possible)?

- Rules of trading venues (i.e. exchange rulebook); YES
- Approval of rules of trading venues and oversight over their implementation/changes; YES
- Governance of the market operator; YES
- Open/fair access provisions; YES
- Other areas (please specify)

From an equities markets perspective, we think that there is a high level of harmonisation of EU rules with respect to all areas covered in this Question. However, we stress that there are instances where the interpretation and application of those rules may differ across member states. AFME refers to the response in Question 1 as to why this question is not deemed relevant for fixed income.

5) Please explain and provide concrete examples of areas where a lack of harmonisation might hamper the full harnessing of the benefits of the single market and, where relevant, differentiate between regulated markets and other trading venues (notably, multilateral trading facilities (MTFs), small and medium enterprises (SME) growth markets and organised trading facilities (OTFs)). Please provide an estimate of costs and benefits of greater harmonisation in each specific case, where possible.

**Open/fair access provisions:**
AFME is a long-standing advocate of an integrated, harmonised, low risk and low-cost post trading system in Europe, in which post trade infrastructures and service providers compete in a harmonised and standardised operational, legal and regulatory environment, offering innovative and low-cost services to all users on a non-discriminatory basis.

Although the introduction of MiFIR represented a significant positive step in achieving this ambition, for equity markets we think that there are opportunities to further strengthen the provisions on CCP non-discriminatory access to a trading venue (Article 36 MiFIR) to ensure that competition and user choice are promoted in securities markets. Any changes to existing level 1 and level 2 rules should aim to ensure that the cost for CCPs seeking to establish access to a trading venue's feed are fair and reasonable, and do not create a barrier to entry. This can foster competition between CCPs, by ensuring a level playing field between venues' incumbent CCPs and new entrants. The result of this competition is improved services and significant cost reductions for direct and indirect users of CCPs.

User choice allows clearing providers to consolidate their activity in fewer CCPs, achieving economies of scale in unit pricing, the ability perform to cross-exchange netting and the optimisation of risk netting by not splitting portfolios. These benefits are passed back to investors and companies, by virtue of their respective clearing providers charging lower fees.

## 2.3. Integrating liquidity pools across the Union

### 2.3.1. Integrating liquidity pools across the Union

6) Can the use of new digital technology solutions contribute to integrating liquidity pools or connecting different pools across the EU? What barriers do you face in implementing such technology-based solutions? Please explain.

*Don't know/no opinion*

As we further explain below, establishing connections between every venue would constitute a substantial technology investment and cost for venues, which would ultimately be borne by end investors. There will also be further complexities in implementing an equivalent level of interconnection for different parts of trading activity such as in relation to fixed income instruments. In fixed income there are a very small number of trading venues/MTFs compared to the equities market which has many more exchanges (approximately 35). As explained in our response to Question 1 above, these MTFs operate more like ***conduits to*** the liquidity providing market makers than individual sources of liquidity themselves. However, it should be noted that there are still significant costs associated with trading fixed income instruments.

7) What is your overall assessment of the level of direct connection (i.e., ability to directly execute orders) of EU investment firms to execution venues across the Union, especially to execution venues located in a different Member State than that of the investment firm? Please rate it from 1 (absent) to 5 (efficient) and provide an explanation.

SCORE: 5

Please explain

Please see our response to Question 8.

8) What is your overall assessment of the level of indirect connection (i.e., ability to execute orders via another intermediary) of EU investment firms to execution venues across the Union, especially to execution venues located in a different Member State than that of the investment firm? Please rate it from 1 (absent) to 5 (efficient) and provide an explanation. Please provide a comparison of cost efficiency of direct and indirect connection.

SCORE: 5

The cost of direct connectivity varies across venues. Firms who wish to connect directly in a cost-efficient manner have to take into consideration the different requirements and applicable costs of each venue. Therefore, it may be the case that smaller firms/asset managers typically prefer to make use of an intermediary to connect indirectly to venues in a more cost-effective manner. The rationale of the indirect connectivity lies in the circumstance that the flow/the volume of orders does not justify the fixed costs. We acknowledge that for smaller market players, the costs of connectivity, whether direct or indirect, can be significant.

9) Are there any barriers to the use of technology-based solutions that contribute to achieving higher levels of connection?

Yes/no/don't know

We note that firms will have to deploy a great amount of resources for the initial setup and continuously thereafter to support connection. Achieving higher levels of connection is therefore a commercial decision for firms.

10) Are you aware of instances where intermediaries charge their clients higher fees for executing clients' orders on a trading venue in a Member State that is different from the Member State of the intermediary?

Yes/No

No – we are not aware of any such practices.

11) Are there any barriers that may limit the possibility for trading venues to offer trading in financial instruments that have been initially admitted to trading on another trading venue? Please reply differentiating by type of trading venue.

| | Yes | No | No opinion |
|---|---|---|---|
| Regulated markets | | X | |
| MTF | | X | |
| SME Growth Markets | | X | |

Please explain your answer.

Although in principle there are no barriers, trading venues may not offer instruments where there would be limited demand, in particular in comparison to the potentially high costs of establishing the necessary post-trade connectivity. Many authorised trading venues (TVs) are national or regional, and do not compete against TVs of other jurisdictions or regions, and only marginally do with the very small number of TVs that are pan-European in nature.

This is why EU capital markets are fragmented across national lines. The real equity market in any given Member State is normally: i) the incumbent exchange; ii) a small number of MTFs; and iii) systemic internalisers. Each member state has historically had a dominant stock exchange exercising concentration rules to which MiFID brought welcome competition and reductions in the cost of trading by the introduction of alternative venues and transparency to off-venue trading. However, unlike incumbent national exchanges, other venues and MTFs offer trading facilities cross border for a wide range of EU instruments, contributing to EU capital markets integration.

As an illustrative example (see Annex Figure 1), in 2023FY based on data from BigXYT, 57% of trading volume of CAC40 constituent shares was executed on Euronext Paris, 25% on CBOE, 4% Turquoise Europe. 62% of DAX40 trading volume was executed on Xetra, 24% on CBOE, 4% Turquoise Europe. The lack of trading of non-domestic shares on national incumbent exchanges illustrates the high level of national fragmentation.

In contrast, fragmentation along national lines is not observed for trading mechanisms where the participation of the incumbent exchange is minimal or not existent. That is the case of trading under the Double Volume Cap (where pre-trade transparency is waived, but not post-trade transparency), where trading venues have a consistent market share across all EU equity indices, regardless of national lines. Using BigXYT data we found that in 2023FY only 34% of trading volume of CAC40 constituent shares was executed on CBOE, 16% on ITG, 13% on Liquidnet. 38% of DAX40 trading volume was executed on CBOE, 15% on ITG, 12% on Liquidnet (see Annex Figure 2).

12) How would you rate the impact of multiple ETF listings in the EU on the attractiveness of the market in comparison to other third-country markets, from 1 (very negative) to 5 (very positive)?

| 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|
| | | X | | | |

Multiple listings of Equity ETFs appear to be necessary for providing access for retail investors to these instruments. As explored in question 13, this may be a function of both investors' preference and legal barriers to accessing non-domestic ETFs. The negative connotation of multiple listings of the same ETF is that it creates

additional friction and complexity from a post-trade processing perspective, contributing to increased costs for end investors.

13) In your view, which of the following are the most relevant drivers for multiple listings of ETFs in the EU? Please explain. In case of legal barriers to a more integrated trading landscape for ETFs leading to necessary multiple listings, please indicate the relevant provisions and what legislative measures you would recommend to solve this issue.

| | Please select the relevant items. |
|---|---|
| Market practices pertaining to investment firms (e.g. lack of direct connection to venues situated in a different Member State than the one where the investment firm is located) | |
| Market practices pertaining to trading venues | X |
| Market practices pertaining to CSDs | X |
| Barriers linked to interoperability between CCPs | X |
| Supervisory practices | X |
| Other barriers (including legal barriers at EU level, legal barriers at national level, tax) | X |

Please, explain and provide concrete examples, and where possible estimates of costs.

Anecdotal feedback indicates that there may be national rules or idiosyncrasies which mandate or encourage domestic investors towards domestically listed ETFs. For example, some German savings plans only offer tax incentives to securities listed on a German exchange. There may also be an investor preference to trade in a listing that is denominated in their local currency, hence requiring multiple listings on one exchange in multiple currencies.

14) In your view, should any intermediary offer its clients the possibility to trade, on any EU regulated market, MTF and SME growth market, in all shares and ETFs admitted to trading in the EU?

Yes/No/No opinion

Please explain your reasoning and provide where possible estimates of costs and benefits.

Regulation should not prescribe the mandatory connection of an intermediary to any EU trading venue in all shares and ETFs admitted to trading in the EU. Intermediaries conduct their individual assessments on how they provide best execution to their clients in accordance with the regulatory framework and thus, selecting the venues on which they trade should be part of this assessment. This flexibility also allows investors to choose which is the most suitable intermediary to meet their own objectives and promotes competition for the provision of intermediary services.

We also stress that a legal requirement for connectivity to all trading venues would lead to increased costs that would be disproportionate, especially for small and medium sized entities. In order to achieve more integrated capital markets in Europe, we think that there are other, alternative solutions that can be more cost-effective. In particular, the successful establishment and operation of the consolidated tape for equity instruments (as well as for other asset classes) will improve the quality of market data and enable market participants to have a more complete, truly pan-European view of the market. This will benefit institutional and retail investors alike as it will allow better informed decisions on access to trading venues and instruments.

14.1) If you responded “No” to the previous question, please specify whether your answer

would change if:

| | Please select the relevant items. |
|---|---|
| the scope of instruments was limited to only a subset of all shares and ETFs admitted to trading in the EU, based on certain characteristics (e.g. market capitalisation above a certain threshold). | NO |
| the scope of trading venues was limited to only a subset of trading venues (e.g. only EU regulated markets and MTFs having a significant cross-border dimension). | NO |

Please explain

As mentioned in our response to Question 14, investors can benefit from an increased level of competition if intermediaries are able to decide whether to connect to a trading venue or not in order to provide to their clients best execution services. We would not support changes to market structure rules that would mandate intermediaries (in full or only partially) to offer to clients trading, on any EU regulated market, MTF and SME growth market, in all shares and ETFs admitted to trading in the EU. The current best execution framework is regarded efficient and we think that regulators are equipped with the necessary powers to take any appropriate enforcement measures, should an intermediary's choice of execution mechanisms be deemed inadequate to comply with best execution rules.

In ETF markets specifically, the proliferation of dual or multiple listings provides investors with opportunities for trading on venues that have proximity to them.

14.2) If you replied "No" to question 14, do you believe any intermediary should ensure, in relation to those shares and ETFs it offers for trading to its clients, the possibility to trade such shares and ETFs on any EU regulated market, MTF and SME growth market? To note, while the previous question concerned *all* shares and ETFs admitted to trading in the EU, this question limits the scope of instruments considered to those the intermediary decides to offer for trading to its clients.

Yes/No/No opinion

Please explain your reasoning and provide where possible estimates of costs and benefits.

We reiterate our belief that any assessment should be made at an individual level by each intermediary in accordance with best execution principles. We welcome supervisory scrutiny of whether those assessments do not currently provide a sufficient level of connectivity (either directly or via another intermediary) to meet best execution requirements.

14.2.1) If you responded "No" to the previous question, please specify if your answer would change if:

| | Please select the relevant items. |
|---|---|
| the scope of instruments was limited to only a subset of those shares and ETFs that an intermediary offers for trading to its clients, based on certain characteristics (e.g. market capitalisation above a certain threshold). | NO |
| the scope of trading venues was limited to only a subset of trading venues (e.g. only EU regulated markets and MTFs having a significant cross-border dimension). | NO |

Please explain

We refer to our previous responses to Question 14, 14.1 and 14.2.

15) Do you believe that intermediaries could improve clients' access to liquidity across the EU by using Smart Order Routing or other similar technologies? What would be the potential costs associated with it and what are the most useful/promising technologies in your view?

Yes/No/No opinion

Please explain.

For large intermediaries in wholesale equity markets, technology such as Smart Order Routers (SORs) is a vital component of supporting intermediaries' efforts to provide their clients with improved access to liquidity in compliance with best execution obligations. SORs make it feasible to address the problem of the fragmentation of liquidity across the EU and based on anecdotal evidence, this reasoning applies also to the retail market. To this end, intermediaries either develop their own solutions or use third parties/others intermediaries to enhance the execution process though SORs or other similar technologies.

16) Beyond membership and execution fees, trading venues may charge connection fees. To the extent this information is available to you, could you provide figures on the amounts charged by individual trading venues or types of trading venues (e.g. regulated markets, MTFs, etc.)?

As we further explain in our response to Question 58, the rising cost of market data is a key concern of market participants. We also refer to a recent study by Market Structure Partners* which analyses the evolution of equity market data businesses and fee structures at Europe's largest incumbent stock exchanges and their impact on the market. It is also essential to recognise that the expense associated with market data extends beyond equities markets and has also been observed in fixed income markets, as evidenced by AFMEs February 2025 publication**.

*https://marketstructure.co.uk/our-work/theres-no-market-in-market-data/

**https://www.afme.eu/publications/reports/details/fixed-income-market-data-costs---the-burden-continues-to-rise?utm_campaign=fidatareport2025&utm_source=afme&utm_medium=social

17) Increased access to financial instruments on a cross-border basis can also be ensured by improving the interconnection between all relevant EU regulated markets and MTFs. To that end, would you consider important to ensure an increased level of interconnection between trading venues in the EU?

Yes/ Yes, provided it is funded/co-funded by public funds/ No/ Don't know.

No, we do not think that this is necessary and note that intermediaries already facilitate a high level of interconnection for investors to different liquidity pools. Establishing connections between every venue would constitute a substantial technology investment and cost for venues, which would ultimately be borne by end investors.

18) Which of the options referred to in questions 14 and 14.1 (better access to trading venues by intermediaries, option A) and question 17 (increased interconnection between trading venues, option B) would better achieve the following objectives:

| For each line, select the most appropriate option. | Option A (better access to trading venues by intermediaries) | Option B (increased interconnection between trading venues) |
|---|---|---|
| Increasing the level of liquidity for shares and ETFs | X | |

| | | |
|---|---|---|
| Improving the quality of execution | X | |
| Increasing the speed of execution | X | |
| Reducing the cost of execution for clients | X | |
| Delivering a more efficient EU trading landscape | X | |

We strongly emphasise that, as expressed in our responses to questions 1, 14 and 17:

- institutional investors are already well-served by the current market structure. They are able to efficiently connect to a range of trading mechanisms and liquidity pools, whether directly or intermediated.
- neither of the proposed options (mandating connections between intermediaries and venues, or venues and venues) are an effective approach to improving retail investors' access to cross-border pools of liquidity.
- considering the level of additional costs incurred by venues and intermediaries to establish and maintain such connections, this would ultimately not result in a lower cost of execution for clients. These costs would be significantly exacerbated by the complexity in establishing the necessary connectivity to facilitate post-trade clearing and settlement.
- instead, we recommend focusing on maximising the amount of information available to investors, at the minimum cost. This includes the delivery of the consolidated tape and a more robust framework for ensuring market data is provided on a reasonable commercial basis. Investor outcomes will be improved by having a better picture of where addressable liquidity is available and at what price.
- where necessary, this should be supplemented by appropriate scrutiny and enforcement of the existing regulatory framework, ensuring that intermediaries are delivering best execution for their clients.

19) In other jurisdictions, notably the US, an increased level of interconnection at the level of trading venues resulted from the application of the 'order protection rule' (Rule 611 of the Regulation National Market System) that established intermarket protection against trade-throughs for certain shares. Do you have any experience with this rule?

Yes / No / No opinion Please explain

If so, on a scale from 1 (low) to 5 (high), please assess the effectiveness of this rule in terms of:

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|---|
| Guaranteeing the best price for clients/investor protection | | | | X | | |
| Speed of execution | | X | | | | |
| Level of execution fees | | | X | | | |
| Split of liquidity | X | | | | | |
| Interconnection between trading venues | | | | X | | |
| Efficiency of the price formation process | | | | | | X |
| Modernising trading protocols (e.g. digitalisation/ electronic trading | | | | | | X |

Are you aware of any issues that can arise from this rule? Please provide specific examples.

Yes / No / no opinion

It should be highlighted that the differences between the structure of the markets and related regulation in the US

vis-à-vis the EU would require a very cautious approach when comparing the respective rules and approaches on best execution as well as, when trying to use the US rules and approaches as a source of inspiration for any EU regulatory initiative in this field. In this context, we flag the following concerns:

**Excessive and exclusive emphasis on price**
Whilst Rule 611 (the "Rule") has been effective at guaranteeing best price (for in scope transactions), we consider that a more flexible and holistic best execution framework (as per the current EU model) is advantageous, allowing firms to take into consideration other important factors such as likelihood of execution, speed of execution and overall transaction costs (including clearing and settlement).

**Less user choice**
Given the nature of the Rule, market participants have less flexibility to manage order flow: they are often forced to take smaller chunks of liquidity from multiple venues making it harder to execute block transactions and creating the risk of information leakage.

**Greater fragmentation due to venue proliferation**
The Rule has lowered the barriers to entry for new venues, providing guaranteed order flow and forcing market participants to immediately connect to them, even if the venue offers little by way of innovation or differentiation from the incumbents.

**Increase in membership and connection fees**
Although the Rule has been somewhat successful in creating competition in execution fees, it has also been observed that this has led to exchanges adopting a significantly complex fee model. The proliferation of venues also leads to an increase in fees for market participants to be a member of, and connect to, the larger number of venues.

The issues identified above have also been confirmed by academic studies and research which demonstrate deterioration of market quality*. Some of the key findings are the following:

- **After the implementation of Reg NMS, both the quoted and effective spreads increased, the quoted depth decreased, and the market quality index decreased**.
- The order execution speed is slower, the order fill rate is lower, and the order cancellation rate is higher for most trades after Reg NMS.
- Contrary to the SEC's belief, Reg NMS has proven to be detrimental to most traders.
- Reg NMS makes price the sole criterion for determining how and where orders will be executed, but the best execution for investors also includes other dimensions such as the probability that execution occurs.
- Fees and clientele segmentation drive the proliferation of order types in the Reg NMS era and the incentive to circumvent Reg NMS is strong.

Most importantly, one study found that **62% of routings lead to worse net prices (including routing fees).** This is because Reg NMS links routes orders to the National Best Bid and Offer (NBBO). However, the NBBO ignores exchange fees. As a result of the above, there is now an increased scope of exclusions and orders that refuse Reg NMS routing comprise 57% of trading volume on the New York Stock Exchange (NYSE).

The effectiveness of the order protection rule is under increasing scrutiny in the US, from both market participants and public authorities. For example, SEC Commissioner Peirce** has noted a "largely homogenous, proliferating exchange landscape" emerging since the introduction of Reg NMS, where some new exchanges that "display no intent to innovate" can "earn significant revenue through connectivity and market data fees regardless of how much trading volume it attracts". Modification, or even elimination, of the order protection rule are suggested as potential policy options.

In addition, in a 2021 independent study sponsored by Plato Partnership***, it was demonstrated that Reg NMS is not a suitable framework for the European market. The study concludes that Reg NMS comes at the cost of greater complexity in technology, fee models, order types, and has the potential for excessive fragmentation. The study also provides alternative approaches to ensure greater accountability on best execution without departing from

the principles-based approach to best execution taken in MiFID II.

* Chung, K.H. and Chuwonganant, C. (2012), Regulation NMS and Market Quality. Financial Management, 41: 285-317. https://doi.org/10.1111/j.1755-053X.2012.01184.x;
Sida Li, Mao Ye, Miles Zheng, Refusing the best price?, Journal of Financial Economics, Volume 147, Issue 2, 2023, Pages 317-337, https://www.sciencedirect.com/science/article/abs/pii/S0304405X22002306;

** Commissioner Hester M. Pierce (2025), Horses and Bourses: Remarks at the 12th Annual Conference on Financial Market Regulation, https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-financial-market-regulation-051625

***Comerton-Forde (2021) Would Reg NMS be beneficial for Europe? Ensuring the resilience of European equities trading https://drive.google.com/file/d/18P9KSp4c3hoLaB1JruvXq57YarXnAYVs/view

20) Where implemented, the order protection rules required technological adaptations, so to allow the swift rerouting of the orders. On a scale from 1 (insufficient) to 5 (completely adequate), what is your assessment of the ability of the current state of connections among trading venues in the EU to cater for the rerouting of orders to venues offering the best price, as required by the order protection rule in the US?

**SCORE: 1**

There are currently limited connections between trading venues in the EU. Instead, intermediaries provide their clients with the ability to connect (indirectly) to a range of execution mechanisms.

21) Do you consider that geographical dispersion of EU trading venues would pose issues to an effective implementation of similar rules and, if so, are there any means to tackle them.

Yes / No / No opinion Please explain

The dispersion of EU trading venues (and their data centres) across geographic Europe could, in the context of an order protection rule, create significant opportunity for “latency arbitrage”. High-speed, sophisticated market participants may be able to exploit the time delay in communication between geographically dispersed trading venues, at the expense of smaller brokers and asset managers. Since the introduction of Rule 611 in the US, a significant “arms race” for improved speed (e.g. through colocation services and proprietary data feeds) has been observed. This aims to address the inefficiencies to execution speed caused by the introduction of Reg NMS, namely that order execution speed is slower for most market orders and marketable limit orders as verified by recent academic research.

22) If the current set-up does not allow for it, what are in your view the necessary arrangements to allow for sufficiently fast connections, and what would be the associated costs? Please provide cost estimates where possible.

AFME defers to exchange groups to provide a more granular assessment of the scope and cost of establishing such connections. However, we assume this to be substantial, and completely misaligned with broader objectives to simplify regulation and reduce its burden on the wider industry.

23) Crypto-markets have seen the emergence of a market architecture whereby retail investors have direct access to a crypto-asset trading venue. Do you see merit in allowing or promoting the direct access of retail participants to trading venues for financial instruments, without an intermediary?

Yes/No/Don't know

If your response is 'yes', please explain the advantages and disadvantages of such a model, as well as the risks and how they could be mitigated.

In principle, we see merit in promoting direct retail access to venues. We are cautious though about the level of costs for retail investors as well as the complexities and technological and other associated risks due to the large volumes of direct connections that venues would be required to facilitate. We also reiterate that indirect connection can provide a more cost-effective solution for smaller market participants, including retail investors.

## 2.4. Ensuring fair access to market infrastructure to foster deep and liquid EU-wide markets

24) What is your assessment of the effect of the removal of exchange-traded derivatives from the so-called 'open access' to CCPs and trading venues provision under Articles 35 and 36 of the reviewed MiFIR? Please include elements in terms of costs of trading and clearing, depth of market, switch to OTC.
Don't know/no opinion

25) On a scale of 1 (not at all functioning) to 5 (perfectly functioning), what is your assessment of the effectiveness of the open access provisions under Articles 35 and 36 of the reviewed MiFIR on other financial instruments, notably equity?

Please explain

**SCORE: 3**

26) Have you identified any barriers to the proper functioning open access provisions under Articles 35 and 36 of the reviewed MiFIR? If so, please specify such barriers and, where appropriate, suggest the necessary legislative amendments to address them.

[Yes, No, No opinion]

As mentioned in our response to Question 5, there are opportunities to further strengthen the provisions on CCP non-discriminatory access to a trading venue (Article 36 MiFIR) to ensure that competition and user choice are promoted in securities markets.

Article 36 could benefit from targeted adjustments to enshrine that the cost for CCPs seeking to establish access to a trading venue's feed are fair and reasonable, and do not create a barrier to entry. Such fees should not create an advantage for a CCP commercially affiliated with the trading venue (operating a "vertical silo"). AFME also propose that the rejection of access to an additional CCP should be on the basis of the CCP's ability to operate in that market without introducing undue risk as a result of that CCPs own risk models, not with a view to protect the market share of trading venues and introduce barriers to competition in the clearing space.

We believe that these proposals can foster competition between CCPs, by ensuring a level playing field between venues' incumbent CCPs and new entrants. Accordingly, the result of this competition is improved services and significant cost reductions for direct and indirect users of CCPs.

However, the only way for open access provisions to be truly effective in delivering competition and user choice, is if all CCPs that receive a trading venue's data feeds have interoperability arrangements with each other, allowing parties to a transaction to select different CCPs for clearing. So called "preferred clearing" models do not in fact ensure that the trading parties' preference is realised, as transactions default to the CCP selected by the trading venue, unless both parties specify the same preference. Existing interoperability arrangements by certain CCPs have

been hugely successful in driving down fees for cash equities clearing, estimated to be at least 50%, reducing the cost of transacting for investors.

27) Have you identified other barriers in terms of fair access relating to trading infrastructure, beyond those addressed under Articles 35 and 36 of the reviewed MiFIR?

No other barriers have been identified.

## 2.5. Enhanced quality of execution through deeper markets

28) When the same financial instrument is traded on multiple execution venues, the best execution rule plays a key role. The rule seeks to protect investors, ensuring the best possible result for them, while also enhancing the efficiency of markets by channelling liquidity towards the most efficient venues. On a scale from 1 (insufficient) to 5 (completely efficient), what is your assessment of the effectiveness of the best execution rules in the EU?

**Score: 4**

Please explain

From an institutional investor perspective, AFME members believe that the existing best execution rules are efficient and can effectively support trading in wholesale capital markets. Under the current rules, regulatory authorities are also empowered with sufficient flexibility to exercise any supervisory and enforcement powers. We note that for smaller market players, compliance with best execution requirement can be challenging given the complexity of connecting to a large number of trading and post-trading infrastructures.

29) There are important differences between best execution rules in the EU and in the US. In particular, in the EU, the obligation to obtain the best possible result for the clients lies on the intermediary. In the US, the quality of execution is guaranteed also through the aforementioned "order protection rule" that prevents trading venues from executing orders if a better execution price can be found on another exchange. Which of the following options would most accurately reflect your assessment of the best execution framework in the EU vis-à-vis the US?

Please explain your choice.

| | Please select the relevant option |
|---|---|
| The EU framework is better suited than the US framework to obtain the best results for clients | X |
| The US framework is better suited than the EU framework to obtain the best results for clients | |
| Both models are equally effective | |
| Both models are equally ineffective | |

Please explain

As noted in our responses to Question 19 and 28, we believe that the current EU rules for best execution are effective, and provide a more holistic and flexible framework, without the shortcomings of an over-emphasis on price.

One notable difference between the US and the EU is the level of complexity of the post trade landscape, which results in higher and more variable post trade costs in EU equity markets. In the EU context, factors other than execution price are therefore a more relevant consideration when assessing overall transaction costs. Having increased flexibility in the regulatory framework to manage order flow is necessary, which the current EU framework provides.

The EU framework also provides flexibility to consider factors such as size, immediacy, and probability of execution, making it easy to execute block trades.

Establishing an "order protection rule" would entail significant costs, which likely would ultimately be borne by end investors. Analysis of the effectiveness of the rule in the US points to a proliferation of execution venues, implicitly subsidising slower/less liquid venues, and increasing fragmentation.

Before considering any radical changes to the current framework, authorities should prioritise scrutiny of compliance with the existing rules – actively challenging how intermediaries who only provide their clients with access to a limited pool of liquidity – and take appropriate enforcement action if necessary.

30) For equity instruments, the consolidated tape will disclose the European Best Bid Best Offer (EBBO) in an anonymised form. The tape will allow to have increased and integrated visibility on the different pools of liquidity available. On a scale from 1 (not effective) to 5 (very effective) how effective would lifting the anonymity of the EBBO be in achieving the following objectives? Please explain and provide a cost/benefit assessment.

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|---|
| Improving the ability of investment firms to assess the quality of execution | | | | X | | |
| Ensuring a more integrated market whereby investment firms are able to direct their order to the most efficient options | | | | X | | |
| Contributing to the efficiency of the price formation mechanism | | | | | X | |
| Other (please specify) | | | | | | |

Please explain and provide a cost/benefit assessment

**'Improving the ability of investment firms to assess the quality of execution':**

This may lead to more focus on the price element than the execution venue.

**'Ensuring a more integrated market whereby investment firms are able to direct their order to the most efficient `options':**

We stress that the consumption of CT data should remain optional and firms should be free to source the data they deem useful for the purposes of best execution.

**'Contributing to the efficiency of the price formation mechanism':**

Over time this could contribute to a better picture of the market. In particular, we consider that this will be helpful for smaller market players who currently have a less complete picture of overall market liquidity.

31) For equity instruments, the consolidated tape will disclose the EBBO only in relation to one layer of quotes (i.e., show only the best bid and offer, but not the second, third, etc.) On a scale from 1 (not needed) to 5 (essential), how important do you deem expanding the depth of the EBBO displayed by the equity tape? Please explain and provide a cost/benefit assessment.

**SCORE: 4**

Please explain and provide a cost/benefit assessment

In terms of pre-trade data, AFME members would support the inclusion in the tape of the top of book five levels of quotes (price and volume) from venues operating central limit order books during continuous trading, and indicative price/volume data from venues during auctions.

32) Under the current MiFIR, the speed at which core market data is disseminated by the equity consolidated tape is not regulated. On a scale from 1 (not needed) to 5 (essential), how important do you deem defining in legislation the speed at which core market data should be disseminated by the equity consolidated tape? What should be the adequate speed? Please explain.

**SCORE: 4**

Please explain

AFME members support that the equity consolidated tape should be real time and that latency levels should be set at such level to ensure that information will be shown as close to real time as possible.

33) Which of the following options reflects your assessment of the impact on the consolidated tape of requiring systematic internalisers to contribute to the equity pre-trade consolidated tape?

| | Please select the relevant option. |
|---|---|
| It would improve the quality of the data displayed by the tape. | |
| It would reduce the quality of the data displayed by the tape, also considering that systematic internalisers, under certain conditions, can trade at prices that are better than the quoted prices. | |
| It would be irrelevant. | X |

Please, explain your answer

Systematic Internalisers (SIs) are execution platforms which allow investors to trade outside a regulated market or multilateral trading facility. An SI uses its own capital and balance sheet to facilitate an efficient and bespoke service which leads to better priced investment transactions for its clients. When executing a trade against an SI, an investor is trading bilaterally with an investment firm who operates the SI. Therefore, the SI is a counterparty to the transaction, the counterparties are known to each other, as is the counterparty risk. Due to the bilateral nature of an SI execution platform, pre-trade data would not be accessible to anyone not connected to the platform as quotes would be tailored to the specific bilateral relationship with a client. We fully support the inclusion of SI activity on the post-trade consolidated tape, which will be critical to presenting a complete picture of liquidity across EU markets.

34) Which amendments to their regulatory framework would be required to effectively include systemic internalisers as contributors of equity pre-trade data? Are there other hurdles (e.g. technical)?

We do not think that the contribution of equity pre-trade data by SIs would add value to market participants

accessing the tape. Please also refer to our response to Question 33 above.

## 2.6. Building quality liquidity for EU market participants: impact of recent trends

### 2.6.1. Non-transparent ('dark') trading (for equity instruments)

35) The EU's trading landscape is witnessing a decrease of lit order book equity trading (i.e. order book trading with pre-trade transparency). In your view, what are the main reasons that explain such a trend? Please select one or more of the options below and explain your reasoning.

| | Please select the relevant options. |
|---|---|
| Regulation (please specify) | |
| Liquidity fragmentation | X |
| Order flow competition (e.g. development of EMS/OMS) | X |
| Technological developments (e.g. algorithmic trading/HFT) | X |
| Surge in ETFs and passive management | X |
| Other (please explain) | X |

Please explain

The co-existence of both "lit" and "dark" execution venues contributes to a more diverse, competitive offering and offers more choices to investors who are able to select the mechanism that is most appropriate for their specific profile and execution needs.
Lit order book trading remains the largest overall portion of market activity (see our response to Question 36) and is most appropriate when price and immediacy are the most important factors in the trading decision. This has been observed during recent periods of volatility, when lit activity has increased. See Annex Figure 3. Where other factors, such as market impact, are deemed important to investors, other execution mechanisms may be preferred. Investor demand is the driving force behind innovation in execution mechanisms, and any decrease in lit order book activity is simply an expression of investor demand.

Furthermore, we note that in the US equities markets there is also a high level of diversity in trading mechanisms which contributes to a vibrant market ecosystem, see Annex Figure 4.

36) On a scale from 1 to 5 (1 being "too low to harm price formation" and 5 being "excessive and very harmful for price formation") what is your assessment of the impact of the current levels of dark trading in the EU on orderly markets and sound price discovery? Please explain your reasoning.

**Score: 1**

Please explain
Evidence demonstrates that, since 2019, there has been no increase in the proportion of trading executed off venue*. See Annex Figures 5 and 6.

Anecdotal evidence suggests that, since the removal of the volume cap in UK markets, there has been no material increase in levels of 'dark' trading.

We further note that 'dark trading' is subject to post-trade transparency requirements, meaning that it does contribute to price formation. Lit order books are typically only able to support trading at lower trade sizes.

Therefore, market participants rely on post-trade transparency to understand what volumes take place across the market. This post-trade price and volume information then informs the prices for the orders that market participants are willing to send to lit books (and therefore aids price formation on lit books and other pre-trade transparent venues).

There are a number of other factors contributing to price formation, including market sentiment, news, earnings, and other issuer statistics disclosed under issuers' continuous disclosure obligations.

AFME members believe that price formation in Europe is robust and does not require remedial action, particularly in the form of more significant change to Europe's already complex market structure.

*https://www.afme.eu/Portals/0/DispatchFeaturedImages/2020-07-06-Understanding%20the%20Liquidity%20Landscape%20in%20EU%20Equity%20Markets%20-%20Final-1.pdf

37) In your view, how does a more sophisticated use of equity waivers by trading venues (i.e. the design of equity waivers is becoming more complex) affect the business model of these trading venues vis-à-vis bilateral trading systems? Please explain your reasoning.

Although we would welcome more clarity about the meaning of 'sophisticated' use of waivers in this context, our preference is for a level playing field and less complexity in the regulation of waivers. Specifically with regard to the reference price waiver (RPW), we refer to our response to Question 38 below.

38) Do you believe that the existing provisions on the reference price waiver (RPW) are fit for purpose? Please explain you reasoning

[Yes, No, No opinion]

Please explain you reasoning

We support a removal of the volume cap applicable to the usage of RPW. The EU is a global outlier in applying a volume-based constraint on 'dark' trading, which restricts investor choice and adds significant operational cost and complexity. Other jurisdictions which have removed volume caps, such as the UK, observe no material change in levels of dark trading post-removal.

39) Do you agree with the current criteria to determine the reference price?
[Yes, No, No opinion]

If you answered 'No' to the previous question, please specify what legislative amendments would be appropriate.
We think that the criterion of most relevant market in terms of liquidity, which is laid down in Article 4(1) MiFIR to determine the reference price, should be repealed. Instead, the reference price should be determined by the trading venue(s) where an instrument is admitted to trading.

40) Do you believe that the existing provisions on the negotiated trade waiver (NTW) are fit for purpose? Please explain you reasoning
[Yes, No, No opinion]

If you answered 'No' to the previous question, please specify what legislative amendments would be appropriate. If possible, please provide estimates on the costs and benefits associated with the changes.

A large portion of trades carried out under a NTW are what we consider 'technical trades', aiming to achieve improved settlement efficiency and are non-price forming. The post-trade reporting of these transactions skews the perceived usage of the NTW and we therefore support removing said transactions from the scope of post-trade transparency requirements.

41) The current state of EU legislation does not allow a trading venue to benefit from the negotiated price waiver for negotiated transactions that take place with the assistance of a system or trading protocol operated by the trading venue. This is in contrast to current trends observed in other jurisdictions (for example, in the United States, where "multilateral percentage of volume" or "trajectory crossing" venues are allowed). Do you think that trading venues should be allowed to use the negotiated price waiver to execute negotiated transactions that take place with the assistance of a system or trading protocol operated by the trading venue? Please explain your reasoning.

[Yes, No, No opinion]

If you answered 'Yes' to the previous question, please specify what legislative amendments would be appropriate.
We are supportive of innovation by trading venues to increase the attractiveness of their lit offerings to market participants and meet client demand. This will further ensure alignment with other jurisdictions and support the competitiveness of EU securities markets.

Further, we wish to note that the inclusion of language in Article 6 of RTS1, to prohibit the use of the NTW by trading venues in these circumstances, was not subject to consultation with market participants prior to its introduction. We respectfully note that consulting on this change before introducing it, rather than straight afterwards, would have been a more efficient policymaking approach. Regulating in haste and without proper impact assessment risks stifling innovation.

42) Do you think that the existing provisions on the order management facility waiver (OMFW) are fit for purpose? Please explain your reasoning.

[Yes/No/No opinion]

Given the very limited use of this waiver, we do not have any particular comments as to its current effectiveness.

43) In your view, what are the main reasons that explain the rising importance of closing auctions? Please select one or more of the options below and explain your reasoning.

| | Please select the relevant options. |
|---|---|
| Rise of index investing/passive management | X |
| Growing use of quantitative investment strategies benchmarked to the close. | X |
| Increased emphasis on best execution under MiFID II. | X |
| Move away/protection from HFTs | X |
| Other (please explain) | X |

We believe that, to a greater or lesser extent, all of these factors are contributory towards a growing volume of activity in the closing auction, which appears to be the primary driver behind a reduction in the share of continuous lit trading volumes. In addition, we generally consider that the rise of closing auctions should be considered as a symptom of (rather than a cause of) a lack of dynamism and vibrancy in EU equity markets.

Compared to the US, for example, EU securities typically have a lower turnover ratio and lower price volatility. There is, generally, a large degree of consensus on the correct price of the security from the investor community.

This therefore means that there is less urgency to trade the security and thus investors may be more comfortable to wait until the end of a trade day to enter/exit a position in a company's shares.

44) On a scale from 1 to 5 (1 being "no competition" and 5 being "very high level of competition"), what is your assessment of the current level of competition on closing auctions, including between trading venues that offer trading for the same financial instrument?

**SCORE: 2**

If you assessed that the level of competition is below 4, please point to the main causes for such a situation and to the main implications on the broader functioning of EU markets. Please specify which changes to the EU legislation would increase competition? Do you believe that the consolidated tape could play a role in that regard? Please explain your reasoning.

Although there is currently limited competition for closing auctions between venues, an increase in the number of venues running a closing auction in a particular security would not necessarily be a desirable outcome – in particular from a market resilience perspective.

We note that the consolidated tape will help to add important informational value regarding liquidity available on other venues. Furthermore, we stress that the fees charged by trading venues for trading during closing auctions is also a material factor that should be given further consideration. We elaborate on this point below in our response to Question 45.

45) On a scale from 1 to 5 (1 being "very low" and 5 being "excessive") what is your assessment of the level of fees charged by trading venues for orders submitted during a closing auction, compared to any other time of the trading day? Please explain your reasoning, in particular as regards the potential impact of these costs on the attractiveness of EU capital markets, should the concentration of trading in closing auctions continue to increase.

**Score: 4**

If you assessed that the level of fees is 4 or above, do you believe that measures should be taken to reduce costs for investors? If so, could you please specify these measures.

As noted in our response to Question 44, the operation of a closing auction is a natural monopoly, whereby increased competition, and thus fragmentation, is not necessarily desirable. In the absence of effective competition, participants and users of trading venues should be protected from excessive price increases. Therefore, appropriate regulation could be introduced to avoid a dislocation of the trading venues' auction fees compared to intraday trading fees.

46) Have you identified other challenges linked to the raising importance of closing auctions? Have you identified other measures to be taken to address such challenges?

A concentration of activity at the closing auction could create increased operational risk, particularly on major rebalancing days. Trading infrastructures should ensure that their systems are sufficiently robust to mitigate this risk.

47) On a scale from 1 to 5 (1 being "not significantly positive", 5 being "extremely positive"), how positive do you deem extended trading hours / 24-hour trading for the development and competitiveness of EU markets? Please explain your reasoning.

**Score: 5**

In view of the recent global developments towards extended trading hours/24-hour trading, it is clearly a topic that requires further consideration within the EU. We emphasise that a potential move to extended/24-hour trading should be market-driven and based on investor demand. Trading venues should have flexibility to determine their own trading schedules, and we would not be supportive of any initiative to mandate operating hours through regulation. From a policy-making point of view, we support that emphasis should be placed on ensuring operational and regulatory readiness and then leave it to market participants to decide if, how and when a move to extended trading hours/24-hour trading should be made.

In order to ensure that any operational, regulatory, or other type of risks are appropriately addressed it is important that a careful review of the existing trading and post-trade infrastructures is completed. This review will provide the opportunity to (i) reflect on current market practices and investor demands, taking also into account the specificities of the diverse and heterogenous EU capital markets landscape, (ii) remove any barriers that prevent the integration of capital markets in areas such as the quality and completeness of market data and the open/non-discriminatory access of CCPs to trading venues and (iii) promote greater coordination among trading venues as well as the development of best practices to ensure convergence.

As further mentioned below in our response to Question 48, until there is a careful assessment of advantages and risks AFME remains neutral. As part of this preliminary discussion, the following are noted:

Advantages:

- Competitiveness with other jurisdictions where extended trading hours/24-hour trading applies
- Matching the needs of different investor profiles
- Spreading liquidity outside opening and closing auctions

Risks:

- Additional challenges to the resilience of trading and post-trading systems
- Increased costs
- Increased volatility / impact on price formation
- Fragmentation of retail/wholesale markets

48) On a scale from 1 to 5 (1 being "very advantageous", 5 being "highly risky"), how advantageous or risky do you deem extended trading hours/24-hour trading for the orderly functioning of EU capital markets? If you attribute a score pointing at a risk, please explain these risks and, where relevant, differentiate between different categories of investors (e.g. professional investors and retail investors). If you provide a score pointing at advantages, please explain those advantages.

**Score: 3**

49) In your view, do the advantages of extended / 24h trading outweigh the potential risks?

As flagged in our response to Question 47 above, the successful implementation of extended trading hours/24-hour trading would be dependent on a detailed analysis of the potential risks and the implementation of appropriate risk mitigants. Europe should closely monitor developments at the international level.

Given its unique geographic position, European venues bridge the gap between markets in APAC and the US. If those markets were to shift to extended/24-hours trading, the size of traded volumes in Europe could be impacted. It is therefore up to market dynamics to dictate if there is a commercial case for a move to extended/24-hour trading. Nevertheless, the existence of a framework that facilitates integrated and resilient capital markets is a

precondition for the viability of extended/24-hour trading systems.

50) Based on the current legal framework, and considering developments in technology and market practices (including the development of smart order routing systems), is the dividing line between multilateral trading facilities and bilateral trading sufficiently clear?

Yes, No, Don't know.

Please explain and provide concrete examples.

AFME members' view is that the existing legal framework is clear. We stress the role of adequate supervision and enforcement to ensure that the principle of 'same activity, same regulation' is applied consistently to all entities.

51) In your view, what are the benefits stemming from competition between bilateral and multilateral execution venues? Please explain your reasoning and differentiate between different categories of clients (professional investors vs retail investors)?

AFME advocates for a diverse, competitive market offering. A diverse set of open and competitive execution venues for equities trading help different end users achieve their objectives, on the one hand by issuers raising capital at attractive prices and on the other hand by investors efficiently allocating their investments. A robust market structure also fosters financial stability by providing a reliable cushion during distressed market conditions.
Systematic internalisers (SIs) are an important component of the European trading ecosystem as they provide investors with a trading service similar to the way in which banks provide loans to businesses. An SI uses its own capital and balance sheet to facilitate, more efficient and better priced execution to its clients. In turn this ultimately benefits end investors, such as pensioners and savers, who entrust their money to the SI's clients, which include asset and portfolio managers, to obtain the best possible results for them.

SIs act as a 'shock absorber' by limiting price impacts of client positions. SIs are the only trading mechanism that can provide execution against risk capital and therefore, it is vital to preserve such risk provision as part of the EU's market eco-system.

SIs are fundamentally different from trading venues as they utilise their own capital to trade with their clients and in doing so provide a bespoke facilitation role. By comparison, trading venues do not facilitate trades using their balance sheets on risk, and instead bring buyers and sellers together by providing a matching mechanism. Exchanges and other types of trading venues charge a fee for providing a multilateral facility where buyers and sellers can meet and in contrast, SIs earn profit by putting their own capital at risk.

52) In your view, what are the main drawbacks stemming from competition between bilateral and multilateral execution venues? Please explain your reasoning and differentiate between different categories of clients (professional investors vs retail investors)?

We do not observe any drawbacks from a diverse and competitive market, which ultimately creates better outcomes for investors and issuers.

53) In your view, do benefits stemming from competition between bilateral and multilateral execution venues outweigh the associated drawbacks?
Yes/No/No opinion.

Please explain your reasoning and differentiate between different categories of clients (professional investors vs retail investors)?
Please refer to our responses to Question 51 and 52.

54) Does the emergence of DLT-based/tokenised asset markets bring in a new element or dynamic, compared to bilateral versus multilateral venues? If so, how? Should our regulatory framework be adapted to reflect this change? If so, how?

To date, AFME members have not observed any significant impact of DLT on trading. We consider the main potential of DLT-based securities markets is that it can allow and facilitate firms to perform – on DLT – components of the asset registration and settlement functions (currently performed by central securities depositories, or CSDs) on a functional basis.

We view that DLT may bring more seamless connectivity between trading and post-trade, especially as markets mature. This can create new dynamics in the medium- to long-term, and the regulatory framework should allow for the potential of innovation to be realised. In addition, the use of DLT for collateral management and repos has a number of benefits, including faster mobilisation of collateral, automation through smart contract-driven events (such as auto-liquidation of positions), as well as reduced settlement risk from programmable settlement. The regulatory framework should, as such, facilitate the collateral eligibility of DLT-based securities as a priority.

### 2.6.2. Single market maker venues

55) In your view, what are the main benefits and drawbacks associated with so-called "single market maker venues" (i.e. where the venue operator limits market making to one participant)? Please explain your reasoning, in particular when it comes to quality of execution.

Research shows that price competition between market makers enhances liquidity through lower spreads and higher depth. Therefore, retail mechanisms with competing market makers are likely to lead to better execution prices*. In the context of equity markets, single market maker venues can give rise to potential conflicts of interest if they operate as part of the same group/ affiliated entity with the respective trading venue/exchange. Despite the recent ban of payments for order flow, new single market maker models have emerged that may lead to conflicts of interest and suboptimal execution quality. The practices that have been observed recently can vary across member states but the common ground is the tightening of relationships of single market maker venues with brokers and trading venues. This allows access to highly preferential or exclusive terms that restrict even more competition for retail order flow. As noted in previous responses, further scrutiny of such models' compliance with the existing best execution framework should be considered by regulators.

* Fatemeh Aramian and Carole Comerton-Forde, Retail Trading in European Equity Markets (2023), https://static1.squarespace.com/static/6310c0b9bb63a25599f4418c/t/643d09ab19a742431afbd266/1681721775482/FA%26CCF_RetailTradingFinal.pdf

56) Are you aware of any existing practices that may restrict the presence of multiple market makers/liquidity providers on these venues?

Yes, No, don't know.

### 2.6.3. Ghost liquidity

57) Market developments have led to changes in the order submission strategy by certain high frequency traders, such as the submission of more orders than the amount that is really intended to be executed. This may imply that 'consolidated' liquidity (measured as the simple aggregate of a given financial instrument available across all trading venues) is likely to be an overstatement of the actual liquidity that an average trader can access. The difference between measured liquidity and tradeable liquidity is often referred to as 'Ghost Liquidity'. Do you believe that practices associated with Ghost Liquidity are conducive to adequate levels and 'quality' of liquidity and

price formation on trading venues?

Yes, No, don't know.

Please explain your reasoning.

We would agree that high frequency trading has led to a significant change to market dynamics in lit venues. Although regulators should carefully assess the impact of practices of high frequency traders on liquidity and price formation process, it is not clear that there is a need for changes to the current framework.

We restate the importance of maintaining the flexibility and user choice provider by the existing market structure environment, where investors enjoy a diversity of trading mechanisms to best meet their investment objectives and can direct their orders to bilateral trading systems.

### 2.6.4. Other issues on trading

58) Please provide any further suggestions to improve the integration, competitiveness, simplification, and efficiency of trading in the EU. Please provide supporting evidence for any suggestions.

**Address rising market data costs**

Accessible market data is a critical component of healthy and well-functioning capital markets, empowering all market participants to make informed decisions when allocating capital. Existing provisions to ensure that providers make market data available on a 'reasonable commercial basis' have not been successful in controlling the spiralling cost of data, and further regulatory intervention is needed as a priority.

**Create a stable legal and regulatory framework – Prioritise effective supervision over constant regulatory changes**

Since the implementation of MiFID II in January 2018, EU financial services regulation has been under constant review. Most recently, the MiFID/MiFIR Review that was completed last year led to changes to Level 1 rules regulating many aspects of market structure and trading and is expected to bring changes to numerous Level 2 rules (with some of them already announced while others expected in the course of the next few months). These changes typically require firms to conduct costly implementation exercises.

We think that a more stable regulatory ecosystem would promote the attractiveness and competitiveness of EU capital markets. We would therefore urge the Commission to carefully consider the impact of constant changes to regulation on business and ultimately catabolic impacts on growth. In our view, EU policymakers should refrain from introducing additional layers of complexity into the existing regulatory environment via proposals for rule change (other than where there is a clear burden reduction and benefit arising from such a change). In this context, we reiterate our concerns expressed in the context of the recent ESMA consultation on the review of MiFID transaction reporting. The current regulatory reporting framework has been established in piecemeal fashion and there is scope for simplification, given the Commission's renewed focus on burden reduction. However, ESMA's proposals will represent, should they be finalised in their current form, a highly complex and burdensome implementation project for firms that submit MiFID transaction reports. Thus, it would have been more welcomed to explore areas where the regulatory burden on market participants could be alleviated without compromising the oversight role performed by regulatory bodies through regulatory reporting data.

In addition, we would support efforts to modernise and make the rulemaking process more effective. We think that the rising trend of hardcoding regulatory requirements in level 1, together with a proliferation of empowerments for level 2 measures, can produce suboptimal results. To this end, we would encourage a move to a principles-based approach in level 1 that would allow any technical, more specific aspects to be addressed through appropriate level 2 rules.

Finally, we stress the importance of an effective supervisory and enforcement model to support more robust markets. We are concerned about the constant regulatory flux which is used as a means to address any inefficiencies, when the current legal and regulatory framework provides the necessary tools to competent authorities to address them. We would also be supportive of adopting industry best practices where experience shows that market-based solutions can better support competition and growth.

**Promote more targeted regulation**

This consultation provides an opportunity to carefully consider that within the wider trading ecosystem there is a large variety of products that are traded by market participants. There is a clear distinction between equity and non-equity products. Each product has unique characteristics, including distinct participants, structures, and liquidity. Thus, applying the same rules across all different products/asset classes may in many cases lead to sub-optimal results. There is, therefore, need for any future regulatory changes to give regard to the different market practices that apply in the respective market segments in order to ultimately establish a more agile framework where rules are tailored to the specific type of trading activity.

**Extend the equivalence of UK trading venues to UK-based SIs (for post trade transparency requirements).**

EU investment firms are not required to make transactions public in the EU via an EU APA if they are executed on one of the UK trading venues. This is because UK trading venues have been granted 'equivalent status.' However, the EU-post trade transparency requirements are triggered when a transaction is executed over-the-counter, such as with an SI. In those cases, the simultaneous application of both the EU and UK post-trade transparency framework creates complexity. Accordingly, there is a valid case to apply the same exemption that applies with respect to transactions on a UK trading venue also to transactions with a UK SI, given that the latter are also subject to the scope of UK post-trade transparency provisions.

# 3. Post-trading

## 3.1. Barriers to cross-border settlement and other CSD services

### 3.1.1. Cross-border provision of CSD services and freedom of issuance

1) What are the main barriers to the provision of cross-border CSD services in the EU and to freedom of issuance in any CSD in the EU? Please consider all of the following elements (including additional ones, if relevant):

- procedures mandated by EU or national laws (e.g. passporting);
- other legal or regulatory requirements (national or EU);
- lack of clarity and/or complexity on the applicable legal or regulatory framework (national or EU);
- supervisory practice (national or EU);
- market practice (national or EU);
- operational requirements (national or EU);
- differences in national legal, regulatory or operational requirements;
- technical/technological aspects;
- language.

We consider that all of the abovementioned elements are important areas for attention. We note that there have been large scale cross-industry efforts to document these barriers in detail, such as the EPTF Report of 2017, and the forthcoming report of the AMI-SeCo SEG to which AFME has contributed extensively. However, limited progress has been made towards actually addressing and removing these barriers. We therefore welcome the renewed momentum from policymakers towards delivering meaningful change. We strongly emphasise the need for a holistic approach across the capital markets ecosystem – barriers identified are not discrete, and there are significant interplays and synergies between different parts of the transaction lifecycle. Removing barriers is critical for creating an ecosystem in which there is true competition between CSDs on a level-playing field. In turn, competition is essential for providing market participants with genuine choice and, ultimately, improving outcomes for issuers and end investors through reduced costs and increased efficiency and innovation.

We welcome that the consultation appropriately distinguishes between different types of CSD services. The CSD provide services to both issuers (notary function) and investors (settlement and account maintenance functions, typically intermediated). The provision of services to an issuer creates a dominant market position for the CSD to provide settlement and safekeeping services to intermediaries/investors in that issuer's securities. It is therefore critical that the question of cross-border competition and choice is considered from both "sides" of the CSDs' business. Outside of the ICSDs, the level of cross-border issuance is strikingly low – significant further engagement with the issuer community is required to understand the root causes of this.

2) Are there barriers to the freedom of issuance in the EU (e.g. requirements to use domestic central securities depositories (CSD) for issuance/immobilisation/dematerialisation of securities, requirements in the corporate or similar law of the Member State under which the securities are constituted)?

[Yes/No]

**Domestic CSD requirements**

In some Member States (e.g. Spain, France, Italy), national laws require that securities issued by certain issuers must be done in the domestic CSD. This is typically in relation to government-issued debt.

**Registration Requirements**

EPTF barrier 5 identifies that registration regimes are not harmonised across Member States, and in many cases is more efficient and transparent in a domestic environment. This may result in issuers being pre-disposed towards issuing in their home market. To give one example, even in Euroclear ESES which provides a common settlement system across multiple markets, there are two different methodologies and supporting systems for the registration of French securities and Belgian securities.

**Differences in national corporate and securities laws**

EPTF barrier 11 outlines the fragmented EU legal framework for ownership rights of book-entry securities, which makes cross-border issuance more complex than in domestic issuance, and potentially introduces new risks. Again, this may contribute to issuers' home market bias.

3) Are there barriers to cross-border asset servicing and processing of corporate actions, e.g. how Member States compile the list of key relevant provisions of their corporate or similar law, which apply in the context of cross-border issuance (Article 49, Central Securities Depositories Regulation)

[Yes/No]

**Legal Barriers**

As noted in our response to Question 2, there are differences in national corporate laws as to how the rights attached to securities are defined. This can therefore create differences in whether and how investors can exercise their rights depending on their location (or the location of their intermediaries). For example, the definition of "shareholder" for SRDII purposes still depends on the national law of each security's country of issuance. This is particularly problematic in cases of cross-border investment, which typically have longer custody chains (i.e. multiple intermediaries between issuer and end investor.)

**Shareholder identification**

- Lack of compliance with market standards for messaging
- out-of-scope requests in SRDII format
- Lack of disclosure response status messages.
- Lack of standards for cost reimbursement to intermediaries
- Collector adding own response format requirements or specific timing rules between responding intermediaries

**Transmission of information through the chain**

- Lack of compliance with market standards for messaging
- Lack of electronic voting in certain markets
- Lack of use of ISO formats by issuers
- Issuers not held to the same standards of quality and timeliness as intermediaries
- The use of free format messaging breaks STP

**Facilitation of the exercise of shareholder rights**

- Agendas being sent with incomplete information
- Inconsistencies in key dates
- Reliance on physical/manual processes and lack of electronic voting - e.g. POA requirements in certain markets
- Lack of transparency on post-meeting vote confirmation process
- Different processes for non-listed securities

• Lack of clarity/harmonisation of handling of meeting distribution fees from intermediaries

4) Are there barriers stemming from national laws, regulatory/supervisory or operational requirements? (for example:

- setting out restrictions for the place of settlement for primary or secondary market transactions
- preventing securities issued by entities from other EU Member States from being issued, maintained or settled in the national CSD
- imposing additional requirements on CSDs, established in another Member State, wishing to provide services to national issuers and/or participants)

[Yes/No]

**Domestic CSD bias**

In certain government bond markets, such as Spain, France, and Italy, we note that DMOs mandate that the domestic CSD is used for the issuance of new securities and for settlement of primary market transactions.

**Trading venue/CCP rules**

Trading venues designate a default place of settlement for transactions executed on their platforms. Although MiFID Article 37.2 enshrines the right of trading venue participants to designate an alternative place of settlement, this is contingent on agreement of both the trading venue and the trading venue's regulator.

At the clearing level, the settlement location chosen by the CCP implicitly dictates the settlement arrangements of the clearing member. Taken together, the 'path of least resistance' for market participants is determined by the rules/practices of the trading venue and/or CCP. This is the case even for transactions not executed on a trading venue or not centrally cleared, whereby consolidating all holdings/activity into the same settlement location may be the most operationally efficient approach. The rules and practices of trading venues and CCPs, which often own or are affiliated with CSDs, thus significantly influences where market participants choose to maintain and settle assets. Although the 'default' place of settlement may be aligned with the best interests of the market participant (i.e. be the most efficient and cost-effective means of settlement, particularly for domestic transactions), the choice should be at the level of the market participant.

5) Are there any additional barriers to the provision of cross-border CSD services which are not mentioned above?

[Yes/No]

A lack of harmonisation between CSDs at a "functional" level is an inhibitor to seamless cross-border transactions. Market-driven progress towards harmonisation, supported and promoted by public authorities, would not only be beneficial for integration of capital markets but would also support the policy objective of faster and more efficient settlement.

**Settlement Cut-off Times**

The T2S project has been highly successful in harmonising DvP and FoP cut-off times. However, in non-T2S markets, significant variation remains. Seamless settlement across markets requires market cut-off times that allow moving of securities from one market / CSD to another. This is especially important for mobility of collateral where the intra-day reallocation of collateral across markets is key to maximise efficiency at actors that operate across several markets.

**Partial Settlement**

We support removal of the derogations under the CSDR delegated regulation which remove the obligations for certain CSDs to offer partial settlement (alongside similar derogations for hold and release). FMIs in the region should offer uniform functionality, which maximises the opportunity for settlement including cross-border.

There is also a requirement for CSD participants and their clients to support and use partial settlement. However, a CSD participant can only use it if the CSD(s) it connects to supports partial settlement. Noting that CSD participants are often intermediaries providing CSD connectivity to their clients through omnibus accounts, partial release should also be a mandatory CSD functionality.

**Transaction Type Taxonomy**

We note that not all CSDs support all trade types on a consistent basis. This can lead to the instruction being 'NACK'ed at the CSD's SWIFT gateway, and will need to be amended by the settlement intermediary (or overridden by the CSD) to a conforming value.

There is therefore a need for a common taxonomy of ISO transaction codes agreed by all market participants from CSD to end investor. This should avoid duplicative or ambiguous codes.

**Financial Transaction Taxes (FTT)**

Processes for the management of FTTs are typically centralised into the domestic CSD. These processes, as well as the actual tax rates, vary between key member states including France, Italy, and Spain.

### 3.1.2. Links

6) What are the main barriers to building an efficient network of links between EU CSDs? Please consider all of the following elements (please include additional ones, if relevant)

- legal or regulatory requirements (or lack thereof);
- fiscal requirements.
- supervisory practice;
- market practice;
- operational requirements;
- differences in national legal, regulatory or operational requirements;
- technical/technological aspects;
- other.

We defer to the CSD community to provide feedback on the more detailed questions below. We note that, despite significant progress since the creation of T2S, the current network of links between CSDs remains an uneven patchwork of arrangements and believe that all of the factors referenced in the question may be contributory factors. However, we caution against using the number of links between CSDs as an indicator of the level of cross-border activity taking place in EU securities markets. Other intermediaries, such as custodian banks, can provide a safe and efficient means for market participants to connect to non-domestic CSDs.

CSD links are established on the basis of commercial viability – i.e. that there will be sufficient usage of the link compared to the costs of establishing it. This could be considered as a "chicken and egg" scenario – in other words, it is difficult to concretely estimate what the level of demand would be should new links be created There is no clear evidence that the absence of links is inhibiting cross-border settlement. Settlements outside the domestic market can be more expensive, given the involvement of additional settlement intermediaries (such as an investor CSD).

As outlined in previous literature, the incentives for an issuer CSD to establish links with investor CSDs are not clear – the provisions in CSDR and T2S eligibility criteria have therefore been necessary to prevent the creation of artificial barriers by issuer CSDs. We highlight the importance of continued regulatory scrutiny on the costs charged by CSDs to all types of participants (including both other CSDs as well as custodians, on a level playing

field).

We would not support any regulatory requirement for the creation of links between all EU CSDs and believe that this should continue to be market-led. Establishing links between all 30 CSDs would result in approximately 800 total links – this would clearly be an inefficient and costly way to ensure connectivity between all CSDs.

AFME has not responded to the rest of this sub-section

### 3.1.3. Settlement services in the EU

23) How could settlement in T2S be further enhanced in order to build a deeper and more integrated market in the EU and facilitate cross-CSD settlement?

In 2024 AFME published the paper 'TARGET2-Securities: Review of current model and future prospects'* which aims to provide an overview of the development and objectives of the T2S project in Europe, evaluating its effectiveness in improving settlement efficiency, harmonisation, and cost reduction in post-trade processes, as well as promoting cross-border investments within the European Union.

We refer to the following considerations for the enhancements of the T2S platform. These are more widely developed in the abovementioned paper.

**Strategic Recommendations**

Reshaping of CSDs functions: CSDs should assess necessary platform changes to streamline operations, eliminate redundant processes, and reduce costs, ultimately boosting efficiency and savings.

Enhancing T2S functionality: T2S should integrate common features to improve corporate action processes like market claims and transformations, rather than having each CSD manage these separately.

Number of CSDs and currencies in T2S: There is potential for expanding the T2S network to include more CSDs and markets. While the ECB has worked to incorporate other currencies, T2S currently only supports the Euro and DKK. Adding more global currencies could enhance cross-border settlement.

Role of T2S in the SIU Plan: Consider whether T2S can support the broader objectives of the Savings and Investments Union, expanding its role beyond securities settlement. We recommend that EU public authorities explore this possibility, especially in relation to securities law convergence and tax harmonisation.

**Tactical Recommendations**

Investor CSD Model: Broader adoption of the Investor CSD model by CSDs, CCPs, and exchanges could improve cross-border settlement, reduce costs, risks, and complexity by pooling assets across markets, leading to greater efficiencies and expanded services.

Developments of T2S Standards: T2S should establish a standard for its functionalities, encouraging non-T2S markets to adopt similar features.

ECMS Collateral Development: While ECMS is a positive development, further action is needed, particularly from public authorities, to address barriers to efficient collateral use.

Infrastructure Recovery and Control Measures: The ECB should strengthen control measures and recovery processes. Regular meetings of the Crisis Communication Group should be convened during significant T2S outages to provide timely updates and transparent disclosures about recovery efforts.

Review of Operational Procedures: Retention of matched instructions: AFME members would suggest aligning the

60-day timeframe for matched instructions on T2S with the European Commission's FASTER initiative.

*https://www.afme.eu/Portals/0/DispatchFeaturedImages/T2S%20-%20Review%20of%20current%20model%20and%20future%20prospects%20-%20Final%20Report.pdf

24) Should links between CSDs participating in T2S no longer be required to enable settlement in T2S in any of the financial instruments available in T2S?

From a purely technical perspective, we do not see how this would be possible based on the current architecture.

25) Are there any national market practices, laws, rules/regulations, or operational requirements which hinder the participation in T2S or cross-CSD settlement? Please provide details.

AFME members have actively taken part in the production of the expected ECB AMI-SeCo SEG's report on remaining trade barriers to post-trade integration, providing substantial input in regard to the identification of barriers for cross-CSD settlement. We refer to section 5.2.3 of the SEG report, 'Remaining barriers on the location of settlement' where these insights are described in a more detailed way, as well as our response to Question 5 of this consultation.

26) What can be done to ensure progress and take-up by T2S participants of already agreed harmonised standards and market practices (e.g. market standards for corporate actions, SCoRE corporate actions standards, T2S corporate action standards, other T2S harmonisation standards, other relevant global or European market standards and market practices)?

We support NCAs and national authorities taking a more active role in promoting adoption of standards by local market participants and, where relevant, removing obstacles to compliance.

27) Do you comply with the abovementioned standards and market practices (e.g. market standards for corporate actions, SCoRE corporate actions standards, T2S corporate action standards, other T2S harmonisation standards, other relevant global or European market standards and market practices)?
If not, which ones do you not comply with. Please explain why.

[Yes/No]

AFME is a long-standing supporter and promoter of the abovementioned standards, and has contributed to their development. AFME has also created additional standards to support market participants – e.g. guidelines on processing of bilateral claims for CSDR penalties; promoting the adoption and usage of partial settlement functionality; key dates for corporate actions on multi-listed securities with different local settlement cycles.

28) Should T2S harmonisation standards be applied more widely across the EU, in order to create a more harmonised settlement environment across the EU? If yes, which standards are most needed in the non- T2S EU settlement environment?

[Yes/No]

Although this would be difficult to enforce, promoting greater adoption of T2S harmonisation standards across the EU would contribute towards a more harmonised cross-border post-trade ecosystem. However, our preference remains for additional CSDs to directly connect to T2S, as well as complying with the standards. The most relevant standards for pan-EU adoption are:

- Corporate Action standards (CEJWG, T2S and SCoRE standards)

- Functional CSD harmonisation (including cut-off times, partial settlement)
- Messaging standards

29) Should the costs of settlement be reduced? If yes, please explain what could be done to reduce the costs settlement.
[Yes/No]

AFME's preliminary analysis, based on publicly available fee schedules, indicates that the fees charged by European CSDs for the provision of settlement and custody services may be significantly more expensive than those charged by North American CSDs. The underlying reasons for this are likely to be several, and merits further analysis. For example, these higher fees may be, in part, reflective of higher operating and regulatory compliance costs incurred by European CSDs compared to those in other jurisdictions. Regardless of the underlying reasons, the end result is an erosion of returns on investment, and a less attractive environment for both issuers and investors. T2S costs remain a significant component of overall settlement costs.

Further to this, there appears to be substantial variation in the fees charged by different European CSDs. We observed that for some CSDs, custody services appear to represent the major component of overall costs, and for others the inverse is true – the majority of costs relate to settlement services. There does not appear to be a significant correlation between the size of the CSD (in either assets under custody or settlement volumes) and the fees charged to participants. Although larger CSDs may have a comparatively lower cost basis, this does not necessarily translate to lower fees.

This lack of comparability between different CSDs, and the complexity of their fee schedules as elaborated in our response to Question 30, is an inhibitor to effective competition for the provision for CSD services, as market users cannot easily compare different offerings.

*Disclaimer: this is based on analysis by a third-party of a subset of 13 European CSDs (including 2 from outside the EU) and 2 North American CSDs, based on public information. AFME intends to publish a more detailed summary of our findings in due course.

30) Should the transparency of settlement pricing and CSD services be improved (in substance and format), for example with a standard template that would facilitate comparison of prices and service offering?

[Yes/No]

The principle of transparency in the fee schedules of Central Securities Depositories (CSDs) is a cornerstone of the Central Securities Depositories Regulation (CSDR), designed to ensure fair and equitable treatment of all market participants. CSDR mandates that CSDs provide clear, accessible, and detailed information about their pricing structures to foster a transparent and competitive market environment.

The full disclosure of understandable and reconcilable data on pricing, detailing all charges – including transaction fees and account maintenance fees – is fundamental to this transparency. Consistency and stability in fee schedules, along with the provision of sufficient advance notice ahead of any changes, are also critical to allow participants to predict and manage their costs accurately.

However, fee schedules present variations in format, granularity, and user-readability across different CSDs, which undermines the principle of transparency by making cost comparison difficult for participants and ultimately hindering competition across the EU.

We note that harmonisation remains as one of the pillars for the development of the EU Savings and Investments Union. The variations in fee schedules across CSDs highlight the challenges derived from FMI fragmentation, which hinders transparency and cross-border investment. We believe that increasing the harmonisation of CSD fee schedules will enhance competition and market efficiency, thus ensuring that all participants operate on a level playing field, which is essential for the smooth functioning of EU capital markets.

We are fully supportive of introducing harmonisation in CSD pricing structures. We recommend that any regulatory requirements to standardise the CSD fee structures should take into account the following principles:

**Structure**
The principle of transparency in CSDR fee schedules is crucial for ensuring fair and equitable treatment of all market participants. CSDs should make their fee schedules readily available to all participants. This should include a detailed breakdown of all charges (i.e., transaction fees, account maintenance fees, and any other costs that apply). Fee schedules should be presented in a clear, understandable format and be easily accessible. The current lack of harmonisation diminishes the principle of transparency as the differences in format do not allow participants to effectively compare costs between different CSDs. Each type of fee should be described in detail, explaining what the fee is for, how it is calculated, and when it applies.

**Invoicing**
CSD invoicing lacks sufficient granularity for CSD participants to understand what they are being charged for. Further to having more granularity, costs should be easily reconcilable. There should be a clear distinction of which charges correspond to core services from those relating to ancillary services. Core services should be understood in accordance with those provisions contained in CSDR's Annex Section A:

- Initial recording of securities in a book-entry system ('notary service');
- Providing and maintaining securities accounts at the top tier level ('central maintenance service');
- Operating a securities settlement system ('settlement service').

The way in which costs are displayed does not provide sufficient transparency, with costs sometimes appearing duplicative, notably in regard to DCP/ICP costs. It would be important to differentiate services between DCP and ICP. AFME members have reported that CSDs commingle all queries and reporting costs for DCPs and ICPs, splitting based on volumes. This will allow participants to better calculate costs and keep them under control. It has also been noted that some CSDs add T2S charges received from T2S to the invoice of the CSD participant. These would include SWIFT message costs, fails, etc.

**System upgrades and regulatory compliance costs**
Any additional charges for system upgrades should have to be properly identified. CSD participants should not be charged for upgrades to systems that support core functionalities that are inherent to the daily running of BAU processes by the CSDs. In the event of a CSD deciding not to charge for certain core or ancillary services, the CSD should clarify the rationale for this and provide the corresponding cost disclosure (e.g., tri-party settlement fees are generally not charged by ICSDs, whereas normal settlement fees are). CSDs should also not pass on the costs of adapting their systems to comply with new regulation. CSD users already must bear their own regulatory compliance costs.

**Reporting costs**
Network costs (i.e., SWIFT costs) – ICSDs and large CSD groups are billing reporting fees. In order to reduce overall industry costs, the CSDs should offer the ability for reverse billing instead of just applying any pass-through costs (e.g., SWIFT costs) to CSD participants. This would allow firms to benefit from economies of scale vis-à-vis to the chosen network. CSDs also need to provide further transparency on any of these pass-through costs.

**Fairness**
CSDs should not differentiate between participants and should apply the same fee structure to all type of participants (i.e., not to differentiate between local brokers and local custodians).

**Added costs in relation to quasi-discipline measures**
Some CSDs seem to be applying their own quasi-discipline measures, which results in additional costs being

applied to CSD participants (e.g., charging a recycling fee on aged settlement fails). This goes against the spirit of CSDR and therefore these charges should not be applied.

**Notifications**

Fee schedules should be consistent and stable over time, to allow participants to predict their costs accurately. There should be some industry best practices to advise on a minimum notice period for CSDs to notify on any changes to their fee schedules. AFME members believe that this notice period should be of at least three months. Participants should be informed promptly of any changes to fee schedules. This includes providing advance notice of changes and the effective dates.

31) Should all CSDs settling the cash leg in Euro be required to connect to T2S?

[Yes/No]

We note that, whilst harmonisation is a key objective and we see clear value in all CSDs offering settlement in Central Bank Money (CeBM) in T2S, it is equally important to preserve optionality in how CSDs settle the cash leg in Euros, which preserves user choice and avoids increasing costs.

In particular, requiring the ICSDs to connect to T2S could increase costs, as they would still need to maintain legacy platforms to support functionalities not yet available in T2S. Moreover, Euro Commercial Bank Money (CoBM) continues to play a critical role in the liquidity pools of ICSDs.

Although the direction of travel should be toward further harmonisation and integration, this should not come at the expense of market efficiency or operational flexibility. We therefore consider that further analysis is needed to carefully weigh the benefits of broader T2S participation against the operational realities and differing business models across CSDs, and allow market users and FMIs to choose which option best suits their business model needs and preferences.

32) Are there difficulties in accessing settlement in foreign currencies, not only in the T2S environment? If yes, how could the settlement of transactions in foreign currency be facilitated? Please provide a quantitative assessment of the main benefits and costs of such a solution.

[Yes/No]

In general, settlement platforms operate in their domestic currencies, with the notable exception of ICSDs, which settle in CoBM across a number of currencies due to the international nature of their business.

The challenges associated with settling in CeBM for foreign currencies would be broadly similar across environments, including the need for central bank engagement and the complexity of integrating non-euro currencies into existing infrastructures. Should policymakers decide to widen the use of non-Euro currencies for CSDs, further analysis is needed whether the current CSDR provisions around ancillary banking services, which de facto limit the options to ICSDs which already provide banking services to their in house CSDs, is providing the right level of competition and user choice.

33) Is there a need for additional currencies to be settled in T2S?

[Yes/No]

As previously mentioned, T2S currently supports settlement only in Euro (EUR) and Danish krone (DKK), while other major global currencies are not covered. Expanding the range of eligible currencies could significantly enhance cross-border settlement activity.

As a first step, we believe T2S should prioritise enabling settlement in the domestic currencies of non-Euro

markets that have already migrated to the platform (such as Hungary). Looking ahead, any new CSD joining T2S should ideally be accompanied by the migration of its corresponding central bank.

This approach would further support the use of T2S's multi-currency functionality and enable settlement in Central Bank Money.

34) Should T2S be able to provide other CSD services, including issuance services and asset servicing services?

[Yes/No]

The creation of T2S has been successful in creating an enhanced level of harmonisation for settlement services. It is therefore logical to explore whether the mandate of T2S could be extended to also achieve greater harmonisation of other CSD core services – namely notary and account maintenance. Further feasibility and cost-benefit analysis is an essential first step, and it would be critical that any extension of T2S' mandate results in material cost and efficiency savings for the industry.

**Issuance services**

As outlined elsewhere in our response, issuance typically takes place along national lines, with both corporate and SSA issuers typically choosing the domestic CSD to be the Issuer CSD for their securities. The Issuer CSD then has a privileged position for the provision of safekeeping and settlement services in relation those specific securities. Market participants do not have true choice as to which CSDs they obtain safekeeping and settlement services from – this decision is, in effect, made for them by the issuer.

One potential way to address this could be through the creation of a common registration/issuance layer, operated by T2S, to which all T2S CSDs would be connected (analogous to the 'common depository' model used in the ETF market.)

We note that the European Issuance Service (EIS) – which operates under the Investor CSD model – represents a notable success. It enables the National Bank of Belgium, through its settlement system (NBB-SSS), to act as a single issuer for European fixed-income securities. However, it also illustrates the partial success of T2S on the issuance space, as EIS remains limited to the issuance of relatively simple supranational 'vanilla' bonds, while the issuance of more complex securities continues to present significant challenges.

**Asset servicing**

The streamlined design of T2S requires CSDs to manage several key functionalities within their own systems. One area that merits further consideration is the handling of corporate actions, particularly processes such as market claims and transformations. Instead of each CSD managing these functions independently, there may be value in developing common functionalities within T2S to support greater efficiency and consistency. Therefore, we think that enhancing T2S capabilities for the processing cross-CSD of corporate actions is essential. Greater standardisation in these processes would improve operational efficiency, reduce costs, and help mitigate the risk of errors.

35) What improvements (e.g. organisational, operational, contractual, etc.) could be introduced to T2S to support a broader and more resilient use of it?

**Reshaping**

To fully realise the benefits of streamlining functions around a T2S core infrastructure, CSDs should have, at the time of onboarding, conducted internal reviews of their processes to eliminate redundancies. We understand that not all CSDs have taken advantage of opportunities to reshape their internal systems and achieve cost savings, resulting in the duplication of functions (e.g., matching at the CSD level, additional messaging, etc.). As a result, the costs

associated with T2S are being incurred alongside the underlying costs of each CSD. This should be subject to further analysis by CSDs to determine if there is scope for eliminating redundancies.

**Technology Operational Resilience**
A mix of the operational complexity of T2S and the consolidated structure of T2/T2S can potentially create bigger systemic risks; therefore, any single failure impacting the platform could pose a risk of downstream contagion across the whole financial environment.

A prime example of this – which highlights the need for more a robust operational resilience – is the T2S outage on 27 February, which had a significant impact on settlement activity across multiple markets. During this outage, the decision was made to switch to backup systems. Technology resilience best practices have evolved considerably in recent years, and AFME members would like to gain greater insight into the Eurosystem's capabilities in this area. While having a second data centre is essential, best practice would recommend at least three data centres operating in a synchronised active/active/active set up. We note that some market infrastructures that have prioritised resilience even maintain a fourth data centre, which could be activated in extreme scenarios. This would help address situations where the underlying factors affect both the primary and secondary processing sites equally, thus preventing, or negating failover.

Furthermore, we would welcome more transparency on T2S's contingency plans for addressing any potential data loss or corruption scenarios, along with what impacts are foreseen for market participants in terms of necessary reconciliations and data replay to the point of recovery, and what actions the sector can take, in collaboration with T2S, to reduce the impact of these events.

**T2S change and release management processes**
T2S change requests (CRs) typically involve complex and lengthy approval procedures, starting with a preliminary assessment by the 4CBs, which includes an evaluation of the impact on T2S (classified as low, medium, or high) and a rough cost estimate. These requests are then discussed to determine whether they should proceed to the detailed assessment phase, a process that often takes considerable time, with CRs frequently revised based on cost considerations or operational factors.
Currently, only a limited group of stakeholders (specifically the ECB, the 4CBs, CSDs, and NCBs) are permitted to submit CRs. We would recommend exploring the possibility of allowing market participants to raise CRs, to enhance their direct involvement in the T2S community. This would not alter the existing procedures for reviewing, evaluating, and approving CRs.
While minutes from Change Request Group meetings are published on the ECB's website, we believe market participants should receive more regular and detailed updates on the status and progress of CRs. Decisions on CRs should be communicated promptly, with transparent explanations and any related instructions or requirements clearly set out.
We note that, when prioritising CRs, due consideration should be given so that the expected costs incurred are weighed against the scope of market participants that will be benefitting from the CR.

**Review of T2S' instruction retention period**

AFME members would support enhanced operational discipline and the adoption of stricter procedures across certain stages of the process. We note that matched instructions remain on the T2S platform for up to 60 days following the last modification of any matching field, after which they are cancelled if unsettled. In our view, this timeframe is too long and puts unnecessary strain on the platform. We would recommend a review of this timeframe, particularly in light of the European Commission's FASTER initiative.

### 3.1.4. Legal certainty

36) Are there barriers from national legal or regulatory requirements that affect legal certainty of acquisitions and

dispositions in financial instruments, or cash or cash equivalent cross-border?
[Yes/No]

As outlined in our response to Section 4.1, we consider that EPTF Barrier 11 is of high relevance and urgency. A single conflict of laws rule pertaining to ownership rights in book entry securities, or indeed the creation of a "28th Regime" creating a pan-EU securities law which supersedes national law, would address the current legal uncertainty.

37) Does the law applicable to the assets and to the CSD influence a decision to acquire or dispose of financial instruments cross-border?

[Yes/No]

Although the fragmented EU securities law framework creates friction in cross-border securities, we do not consider that there is sufficient evidence that securities law is a material factor in influencing investment decisions (except perhaps in extreme circumstances where the asset is issued under the securities law of a country subject to significant geopolitical risk)

38) Are there barriers for issuers to obtain legal certainty on the ownership of the securities issued in a CSD or any other registrar?
Don't know/no opinion

39) Are there barriers for investors to obtain legal certainty on their rights and powers (e.g. ownership rights, rights in relation to corporate events) and for intermediaries to have legal certainty on their duties in relation to financial instruments, cash or cash equivalent, issued in/maintained in/settled by a CSD?
Are the barriers the same or are there different barriers where the provision of CSD services are made through DLT.

[Yes/No]

If a legal regime, and a set of operational procedures, such as registration procedures, have the effect that an end investor may not (or not immediately) be recognised as the legal owner, then this raises the question of whether the end investor in EU securities has actually acquired the full set of legal rights associated with ownership of those securities. Important steps have already been taken to strengthen the legal framework for the exercise of shareholders' rights, with, notably, the original Shareholder Rights Directive (SRD) of 2007, and a revised version, Shareholder Rights Directive II (SRD II) in 2017, which sets out a series of operational requirements that have applied since September 2020, and that are designed to improve connectivity between issuers and investors, through the chain of intermediaries.

However, SRD II does not contain a definition of the term "shareholder", instead relying on national corporate and securities laws of the country of issuance of the security in question. This means that, in practice, the party identified as the shareholder differs from country to country. This is especially problematic from a cross-border investment perspective. Typically, cross-border custody chains are longer and more complex than domestic custody chains – in other words, issuers and investors are separated by more "layers" of intermediaries. This increases the probability that, under national transpositions of SRD II, and under specific national registration processes, the true 'end investor' is not identified as the 'shareholder'. This makes it more difficult for both issuers to meaningfully identify their shareholders, and for investors to exercise their rights. Difficulties in the exercise of rights occur most frequently in the exercise of voting rights. Common problems include issues arising out of requirements for the provision of paper-based power of attorney documents, out of badly placed record dates for voting entitlements (i.e.: record dates that are too close to or after the market deadline for voting instructions), and out of difficulties in message formats. Some of the difficulties in the exercise of rights are exacerbated by the fact that SRD II is a directive, and the key Level 1 requirements of SRD II take effect through transposition into the national law of each member state. Consequently, and despite the fact that the Level 2 requirements have the legal form of a regulation, the Directive falls short of delivering a single pan-European legal or operational framework for delivering its objectives.

With respect to whether this changes in the case of DLT-based CSD services, there is so far insufficient experience to definitively answer this question, with the law governing DLT-based securities still developing. In principle, it is not obvious that the use of DLT would have any impact on addressing a lack of harmonised definition of shareholder.

40) Are there any barriers to pool assets from different jurisdictions?
Don't know/no opinion

41) Are there barriers, e.g. due to the lack of certainty on the applicable law, to the cross-border provision of services (e.g. issuance or asset servicing) and/or use of services?
[Yes/No]

See our response to questions 2 and 3 in Section 3.1.

42) Are there barriers to the cross-border provision or use of CSD services due to the lack of certainty on the applicable law?
[Yes/No]

See our response to questions 2 and 3 in Section 3.1.

43) Are there barriers to pooling assets from different jurisdictions?
Don't know/no opinion

44) Are there legal certainty barriers to the provision of cross-border asset servicing?
[Yes/No]

See our response to question 3 in Section 3.1.

45) Are there barriers stemming from national laws affecting the legal certainty of acquisitions and dispositions in financial instruments, or cash or cash equivalent?
[Yes/No]

See our response to question 36.

46) Are there new barriers that create legal uncertainty in the provision of issuance / maintenance / settlement services via new technologies (e.g. where bridges are used between different distributed ledgers in the issuing and minting process)?

The establishment of the DLT Pilot Regime has been useful in testing which legal and regulatory modifications are needed to the provision of issuance, maintenance, and settlement services through new technologies. We view that there are significant outstanding barriers, however, related to 1) the collateral eligibility of DLT-based securities, 2) on-venue trading eligibility of DLT-based securities, and 3) availability of settlement assets. We expand on these issues and necessary solutions in Section 4.4. on Innovation.

47) Is there a legal certainty barrier due to the absence of a conflict of law rule, related to proprietary, contractual and system-related aspects, under the CSDR (to complement those under the SFD/FCD etc.)? Are the barriers the same or are there different barriers where DLT is used, considering the divergences and uncertainties on the substantive law on the creation, holding and transfer of digital assets/tokens?

Where DLT is used, there is a conflict of law legal certainty barrier that needs to be examined and addressed. In common with the other points made in this Submission, we are strongly of the view that all relevant EU legislation should be technology neutral. This should also be the case in relation to conflict of law. For example, 1) in relation to how the location of a DLT-based digital wallet is determined, and 2) so that a DLT-based digital wallet has the

same status as a traditional book-entry account. Please see AFME's "Use of DLT and Tokenisation in Financial Markets: A Proposed Vision and Policy Recommendations"* for more detail.

*
https://www.afme.eu/Portals/0/DispatchFeaturedImages/20241104_AFME%20Submission%20to%20EC_Final-%20update.pdf

48) Can the existing approach to conflict of laws under the SFD and the FCD be applied to DLT based networks/systems and collateral transactions?
[Yes/No]

No, as in the above answer to Question 47, we view that clarifications are needed to ensure the technologically neutral treatment of DLT based networks/systems and financial collateral transactions. In addition, as the Eurosystem requires that securities need to be recorded in book-entry form in an eligible Securities Settlement System in order to be eligible as marketable-assets collateral, DLT-based securities do not benefit from this status. Currently, not even securities issued through the DLT Pilot Regime benefit from central bank collateral eligibility; at a minimum, this needs to be resolved. We therefore strongly urge the European Commission to support the Eurosystem in updating its eligibility framework for DLT-based securities issued within and outside the DLT Pilot Regime. Without collateral eligibility, DLT-based security markets would not scale.

49) What is the preferred connecting factor in relation to (a) proprietary (b) contractual (c) system-related aspects related to transactions on a DLT system?

- the law chosen by the participants to a transaction;
- the law chosen by the network participants;
- the law of the legal entity operating the DLT-based system on which digital assets are recorded;
- in relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer is established;
- the place of the relevant operating authority/administrator (PROPA);
- the primary residence of the encryption private master keyholder (PREMA);
- any other?

Would the differences between permissioned and permissionless DLT systems, warrant different rules on conflict of laws)?
A lack of available DLT securities registrars (only permitted under certain MS laws) challenges the issuance of DLT-based securities in MS where such entities are not available.

50) Considering various new types of settlement assets (including tokenised central bank money, electronic money tokens and tokenised commercial bank money) and the different nature of native (only created and represented on the DLT) and non-native (existing outside of the DLT) assets, should the same conflict of law rules apply to all these settlement assets?

Generally, we view that conflict of law rules should aim to deliver the same outcome for settlement assets regardless of underlying system; however, there may be technological specificities that need to be accounted for in the legal framework, for example the recognition of DLT systems that have different constructs from existing systems.

51) Are there any other barriers to legal certainty which are not mentioned above?

We note that the EPTF report (2017) and the forthcoming AMI-SeCo SEG report contain a comprehensive overview of known legal barriers.

### 3.1.5. Barriers and other aspects under the SFD

52) What are the main barriers to the smooth operation of the settlement finality framework in the EU?

**Principles for Reform**

The need for reform of the SFD is well established. The specific parameters for reform need more work before they can be firmly concluded; particularly with respect to novel technologies, such as DLT. The extension of the SFD to new actors and technologies should proceed on the basis of a set of principles which recognise the value of settlement finality for the securities markets generally; and which avoid both the obstruction of technical innovations and the concentration of risks in ways that could impact financial market infrastructures.

We suggest that the following set of principles should be considered as part of the reform programme for the SFD:

- Settlement finality should take priority over the effects of Member States' insolvency rules.
- The settlement system should be able to specify, through its rules, the point at which a transfer order becomes irrevocable. Consistency of result is more important than consistency of timing or means.
- Where a settlement system consists of a series of nodes rather than a single operator, then the contractual rules of the system may substitute for the rules of a system operator.
- Payment and e-money institutions should be able to be recognised as participants in a settlement system for SFD purposes. Their eligibility to be a participant in any particular system should be subject to the conditions laid down by the system operator or in the contractual rules of the system, as appropriate; including any requirements for sponsorship by another participant which is an authorised firm.
- Settlement systems in third countries should be eligible to be recognised for SFD purposes, subject to their ability to demonstrate compliance with the IOSCO Principles for Financial Market Infrastructures, and not on the basis of equivalence and reciprocity of the legal systems within which they operate.

**Form of Legislation**

We wish to note that, to achieve the aims of the legislation and ensure the primacy of the settlement finality rules over national insolvency regimes, it is suggested that it should take the form of a regulation.

**DVP**

We also highlight that SFD does not reflect the important role of delivery-versus-payment (DVP) in today's settlement systems. SFD treats the securities transfer and cash payment legs as separate, when in fact these are linked and dependent upon one another, as detailed in Barrier 10 of EPTF Report.

**Indirect Participation and the Enforcement of Collateral**

We recommend looking at harmonising the way markets in the EU deal with the insolvency of indirect participants within the framework of settlement finality and with respect to financial collateral. The challenge is that transfer orders may be transmitted to a settlement system for a client of a custodian which has become insolvent, and the treatment of the transfer orders as irrevocable could lead to the accumulation of risk at the custodian, i.e. in a participant of the settlement system providing settlement services for its clients.

In some EU markets, a transfer order cannot be withdrawn after it has been matched with the opposite transfer order. In the T2S system, for example, this could only happen with the agreement of each participant. Accordingly, the participant can be put in the position of paying for securities received for the account of its client, notwithstanding the insolvency of the client.

For transactions on a trading venue, a firm acting as a custodian will agree with the trading venue to be appointed as settlement and paying agent. The trading venue will transmit settlement instructions (i.e., transfer orders) without going through the custodian. So, in the case of T2S, transfer orders are sent quickly, and the custodian is subject to the irrevocable commitment to pay funds or deliver securities, based on what the trading venue participant has done.

The better situation would be that the custodian participant should be allowed to cancel transfer orders in the settlement system where there is notice of the insolvency of the indirect participant.

There should also be a self-help remedy available, so that the participant is able to realise as collateral any unpaid securities within its possession or control which are held for the account of the client/indirect participant. If the client/indirect participant is insolvent, then the participant should be able to act straight away, in order to address the risk that there may be a collapse in the value of the collateral.

The participant acting as a settlement agent should be able to suspend transfer orders or cancel them, depending

on the system, so that transactions are not carried out for the account of indirect participants which are not capable of seeing them through directly.

53) Are there any aspects of the SFD that have created barriers for the market or market participants, in particular in a cross-border environment?

[Yes/No]

The uneven national transpositions of the SFD do not provide the same level of certainty and protection to a settlement agent/custodian across the EU, resulting in an increase of pre-settlement risks starting from the point in time when transactions are matched, i.e. from the irrevocable commitment to settle.

The focus should be on the existence of a simple 'right of retention' compared to a 'right of retention AND right of sale' of the assets that are settled by a custodian on behalf of a client. In case of insolvency of the client after the settlement instructions are irrevocably matched, the availability of an immediate right of sale allows the custodian to be more strongly protected, since it can quickly recover the exposure against that client by immediately selling the assets received against the custodian's own money (that was used for the DVP settlement), without any need to wait for an authorisation by an insolvency liquidator.

In some countries, such as Italy, national legislation provides a both a right of retention and a right of sale, but this is not the case in all EU member states.

54) Do the definitions, in particular the definition of a "system" and "transfer orders", result in barriers related to the change in market practice in the set-up of systems as well as the use of DLT?

[Yes/No]

Yes, while the nature of settlement, for the purposes of the SFD, does not change by the use of a DLT or other form of ledger, and that the principal requirement is that an entry can be authenticated and is irrevocable, we view that settlement finality should not be predicated on the existence of a central, authorised FMI (CSD or CCP) which declares when transactions are final.

In addition, we note that the definition of 'transfer order' includes more than one possible definition, which should offer sufficiently flexibility for system rules to be designed in such a way as to be compliant.

55) Is SFD protection important for settlement systems, such as those based on DLT, that settle trades instantly and atomically, and not on a deferred net basis or in settlement batches?

[Yes/No]

Yes, settlement finality is key to the well-functioning of financial markets. This is the case regardless of the underlying technology. We view that the Commission should investigate other ways to achieve legal settlement finality, e.g. by having a contractual framework between network participants as to when a transaction is final (for example, when a transaction is added to the distributed ledger).

In addition, as many DLT-based systems assume an integration between trading and settlement. Further consideration should be given as to the implication of combining the 'trading order' and 'transfer order'.

56) Should settlement systems that achieve probabilistic (operational) settlement finality be designated and benefit from SFD protections?

Don't know/no opinion

57) Are the criteria that need to be met for a system to be designated under the SFD creating unjustified barriers to entrance?

[Yes/No]

In general, we believe that the current wording of the SFD is technology agnostic. We do not see a compelling reason to water down the criteria necessary for designation.

58) Do diverging national practices for notifying systems create an uneven level playing field or legal uncertainty?

Don't know/no opinion

59) For the purposes of designating a system under the SFD, are the current list of participants, the designation process and the focus on entities rather than on the service provided creating barriers for new entities to provide settlement services in a system designated under that Directive?
Don't know/no opinion

60) Does the non-aligned definition of 'collateral security' (SFD) and 'financial collateral' (FCD) create complexities for efficient collateral management?

[Yes/No]

As a general remark, we are supportive of efforts to harmonise definitions of key terms across EU legislation and regulation.

61) Is there legal certainty on the scope of the settlement finality protection under SFD?

[Yes/No]
Please see our response to Question 53.

62) Is the lack of harmonised settlement finality moments in SFD (i.e. leaving it to the rules of the system or national law) creating legal uncertainty and preventing the development of a single capital market?

[Yes/No]
Please see our response to Question 53.

63) The SFD does not apply to third-country systems, however, Member States can extend the protections in the SFD to domestic institutions participating directly in third-country systems and to any relevant collateral security ('extension for third- country systems'). Is the lack of transparency related to Member States extending for third-country systems creating barriers to the provision of services in the single market or creating a non-level playing field for EU entities?

[Yes/No]
SFD gives primacy to the rules of a designated securities settlement system in the event of the insolvency of a participant in the system, in order to protect transfer orders from challenges resulting from insolvency proceedings. We agree that insolvency laws in the EU should not lead to different results when transfer orders are submitted by EU entities to non-EU systems. The extension of the SFD regime to third-country systems, where appropriate, will promote the integrity of the system and provide greater certainty to any EU institution who is a participant. This minimises the risk of Member State insolvency laws undermining the system's determination of settlement finality in case of the insolvency of an EU participant. In other words, an EU court could not be used to undermine the effect of transfer orders in third country systems in a way that could not be done if the system was in the EU.

We note that this is not intended to impact or alter the rules governing any third-country system or apply EU law extra-territorially.

64) Stakeholders have indicated they would like to have an overview of all participants in different SFD designated systems, e.g. shared on one website publicly accessible. Is the lack of transparency related to the participants of designated systems creating barriers to the single market?
Don't know/no opinion

65) Has the fact that SFD designation is not mandatory for all systemically important systems (except when mandated under Art. 2(1) and 2(10) CSDR and Art. 17(4)(b) EMIR), including payment systems, created barriers to the single market?
Don't know/no opinion

66) Are there any national barriers in relation to legal certainty arising from how the SFD is transposed in the Member States?

[Yes/No]
Please see our response to Question 53.

67) Some stakeholders suggested a centralised overview over the insolvency of participants of all SFD designated systems is needed, i.e. published on a common centralised website. Is a lack of transparency related to the insolvency of participants of designated systems creating barriers to the single market?

[Yes/No]
We fail to see how a centralised website of insolvent participants would make a material contribution towards development of a single market. We do not consider this to be a priority issue.

68) Are there any other barriers created by the SFD which are not mentioned above?
[Yes/No]

69) How should irrevocability of "reserved" or "booked" digital assets be achieved?
Don't know/no opinion

70) Is the point in time when a disposition becomes irrevocable problematic to pinpoint in DLT-based settlement systems, and in particular those with probabilistic settlement?
Don't know/no opinion

## 3.2. Barriers to the application of new technology and new market practices

### 3.2.1. Applicability of the CSDR to DLT-based CSDs and the provision of services

71) Considering the core functions of a CSD, i.e. those of notary, central maintenance and settlement, is the current legal framework appropriate to mitigate and control risks that could arise from the use of DLT?

Yes.

We view that the current legal framework is appropriate to control risks that could arise from the use of DLT. However, service-level regulation for CSD core functions should be considered to maximise the use of DLT .In addition, the use of DLT can offer benefits such as providing more transparency and a single-source-of-truth; such benefits should be recognised by the regulatory framework to allow market participants to fully exploit the potential of technology.

72) What are the main barriers in the EU framework to the use of DLT for the provision of CSD services, also in light of the experience gained through the DLTPR? In answering this question please consider all, but not limited

to, the following:

- legal or regulatory requirements (or lack thereof);
- lack of clarity in the applicable legal or regulatory framework;
- supervisory practice;
- market practice;
- operational requirements;
- differences in national requirements;
- Technical/technological aspects;
- Type of instrument;
- other.

The main barriers are 1) legal and regulatory requirements, 2) supervisory environment, 3) market practice, 4) operating requirements, and 5) investments required to adopt new technology. In addition, we note that the eligibility of the DLTPR constrains the ability of financial institutions to participate; we expand on this important concern and associated solutions in Section 4.4 on Innovation.

73) Are there any legal barriers to ensure the integrity of the issue, segregation and custody requirements also in the context of DLT-based issuance and settlement?

Don't know/no opinion

74) Does the definition of cash need to be refined to take into account technological developments affecting the provision of cash, in particular the emergence of tokenised central bank money, tokenised commercial bank money and electronic money tokens? If 'yes', please specify how the use of such settlement assets can be facilitated while maintaining a high level of safety for cash settlement in DLT market infrastructures?

[Yes/No]

The definition of cash needs to be technologically neutral in order to include new tokenised forms of money. Furthermore, we view that settlement of securities should be allowed in tokenised commercial bank money and electronic money tokens in the absence of available tokenised central bank money.

75) Could the use of DLT help reduce the reporting burden?

[Yes/No]

Smart contracts can help with the automation of reporting, and the need to manually configure and send certain reports. This can, for example, reduce the need for manual submission of end-of-day reports. To deliver on these aims, we view that supervisors and regulators should ultimately be connected to the DLT-based system and/or host a node.

76) Would a per-service authorisation of CSD services, with compliance requirements proportionate to the risk of the individual service, make the CSDR more technologically neutral and contribute to removing barriers to adoption of new technologies, such as DLT?

[Yes/No]

Yes, a per-service authorisation of CSD services would facilitate the use of DLT and create a level playing field for innovation (see AFME's report Use of DLT in financial markets). This would also encourage business model innovation and ultimately allow for the full realisation of benefits from the use of DLT whilst facilitating risk management and supervision.

77) Are there any legal barriers for DLT service providers in providing trading, settlement and clearing in an integrated manner, within one entity?

We are not aware of any barriers, although there is normally reluctance to allow complete vertical integration where the entity takes 'own account' risk (for example clearing) as that creates a conflict of interest with the participants (at least in concept). However, DLT allows for the compression of issuance, trading, and post-trade processes and potential streamlining; with enhanced transparency offered by the technology. We strongly advocate that the EU's legal and regulatory framework permit DLT the maximum, seamless connection of these activities.

78) Are there any other barriers that you consider relevant for the DLT based provision of CSD services?

No, we have highlighted the priority areas for DLT based provision of CSD services in this Submission.

79) In particular in permissionless blockchains, validators have the ability to choose which transactions to prioritise for validation and decide on the order of transaction settlement. Can this feature negatively affect orderly settlement and how can it be mitigated?

We note that the concept of orderly transaction settlement is generally different on blockchain (compared to the traditional system), and it would be beneficial to recognise and reflect this evolution in the legal and regulatory framework. We therefore encourage authorities to focus n assessing whether equivalent functional outcomes intended in the traditional world can be achieved through emerging innovations on permissionless chains, even if through different means or mechanisms as needed.

The below outlines the key differences in technical processes between traditional and DLT-based systems:

**Principle of "orderly"**

**Traditional:** Time-based ordering applies to all transactions, both within an account and between different accounts. This time-based principle is especially important given that transactions are batched and netted once/twice a day.

**Blockchain:** Blockchain transactions are not netted, and are processed at regular intervals on permissionless chains e.g.: on Ethereum, a block of transactions is validated and generated approximately every 12sec.

On permissionless chains, time-based ordering only applies to transactions within an address/account. On Ethereum, each transaction from an address is assigned a nonce as a counter to ensure sequential order of transactions from that address.

However, execution order of transactions between different addresses/accounts on permissionless chains is incentive-based, where block builders/proposers select and bundle transactions in a way that would yield maximum gas fee/block reward for them – concept of Maximal Extractible Value (MEV) as a structural, economic design of permissionless chains to preserve network efficiency and security.

**Settlement process**

**Sequential process:** Atomic and final upon confirmation, which reduces risk of unauthorised reversal or manipulation after inclusion.

**Blockchain:** On mature Layer 1s like Ethereum, this is typically supported by economic disincentives such as slashing for malicious validators and other built-in defences, making it economically and operationally challenging to cryptographically reverse a transaction once finalised (about 2epochs/12.8mins on Ethereum).

On Layer 2s, the use of one/few trusted, centralised sequencer ensures that transactions will not be reversed on an unauthorised basis post confirmation. This confirmation can be near instant on the Layer 2, and be deemed as the point of settlement finality in both legal and technical terms. If needed, a transaction on a zero-knowledge Layer 2 with one/few sequencers can potentially be cryptographically reversed before the proof is submitted to Layer 1. Post-proof submission, reversing the L2 transaction would require reversing Ethereum.

We also note that there are a number of mechanisms and technological solutions on permissionless chains that facilitate the orderly settlement of transactions (in blockchain terms) and reduce the risk of external market manipulation by validation nodes and agents.

Block building, during which transaction order happens, has evolved into a highly technical task requiring specialised equipment to optimise block value/reward. This has increased barriers to entry for validators that traditionally perform block building in addition to block proposal. To address this, Proposer-Builder Separation (PBS) has been introduced on permissionless chains (such as Ethereum), to separate block proposal (by validators) from block building (by specialised builders). Validators (as block proposers) select blocks built externally and do not influence the transaction sequence within them. This role specialisation enables greater participation by validators, and promotes accountability and neutrality in transaction processing akin to traditional practices.

While PBS does not completely eliminate the risk of being exposed to block builders who may execute harmful Maximal Extractable Value (MEV) strategies such as frontrunning and sandwich attacks, other solutions such as private order flow can help mitigate this risk by offering an option to send transactions directly to trusted builders through private Remote Procedure Call (RPC), bypassing the public mempool and limiting exposure to untrusted actors. For example, modern private RPCs like Flashbots Protect share order flow with builders under conditions like no front-running, user gas fee rebates if transaction creates arbitrage opportunity.

80) Does the emergence of DLT-based tokenised financial instruments require changes to the provision of CSD services or the requirement to use a CSD?
If so, which CSD roles or requirements could be meaningfully impacted in a DLT environment?

Yes.

We believe that the CSD core functions (notary, maintenance of securities accounts, and settlement) can be meaningfully impacted, and these functions should not be restricted to CSD DLT platforms.

81) Can certain functions normally assigned to or reserved for a CSD be safely, securely, and effectively be performed by other market participants in a DLT environment?
If 'yes', please specify which functions and which market participants, and state reasons.
Yes.

We believe that the regulatory regime should allow for core CSD functions to be performed separately by authorised entities. This is in line with the CPMI Principles for FMIs, and would not lead to an increase in settlement risk but rather a diffusion of concentration and single-points-of-failure risks.

### 3.2.2. Detailed questions on the applicability of the CSDR and SFD to DLT-based CSDs

82) Are there barriers or concerns with the technological neutrality of the CSDR definitions listed below or any other definitions or concepts included in CSDR and SFD in particular in the context of DLT?

| | 1 (not a concern) | 2 (rather not a concern) | 3 (neutral) | 4 (rather a concern) | 5 (strong concern) | No opinion |
|---|---|---|---|---|---|---|
| 'central securities depository' | | | | | X | |
| 'securities settlement system' | | | | | X | |
| 'securities account' | | | | | X | |
| 'book entry form' | | | | | X | |

| | | | | | | |
|---|---|---|---|---|---|---|
| ‘dematerialised form’ | | | | | X | |
| ‘settlement’ | | | | | | X |
| ‘delivery versus payment (DVP)’ | | | | | | X |
| Any other definitions or concepts in CSDR and SFD. | | | | | X | |

For each of the definitions or concepts for which you expressed concern, please explain the exact nature of your concern and suggest potential solutions to address it (including drafting suggestions for a new definition, where available).

**CSD**
The mandatory bundling of CSD core services should be reassessed

**Securities Settlement System**
Securities Settlement Systems should include DLT SS, DLT TSS, and other eligible non-CSD DLT platforms

**Securities account**
This definition should also cover wallets on DLT or similar systems, as well as an address on DLT

**Book Entry Form and Dematerialised Form**
These definitions need to ensure compatibility with DLT and include entries in wallets on DLT or similar systems

Others:
**Securities Registrar**
This should cover DLT-based registrars, in line with some MS examples (Luxembourg, Germany, and Italy), and fully recognise registrars authorised under MS law

**Transfer Order**
Under the SFD, we view that an instruction as part of a transfer order may include the use of cryptographic key or other device or method to digitally sign a transaction

83) Would you have any concerns about the technological neutrality of the following CSDR rules?

| | 1 (not a concern) | 2 (rather not a concern) | 3 (neutral) | 4 (rather a concern) | 5 (strong concern) | No opinion |
|---|---|---|---|---|---|---|
| Rules on measures to prevent settlement fails | | | | | | X |
| Rules on measures to address settlement fails" (e.g. cash penalties, monitoring and reporting settlement fails) | | | | | | X |
| Rules on organisational requirements for CSDs | | | | X | | |
| Rules on outsourcing of services or activities to a third party | | | X | | | |
| Rules on communication procedures with market participants and other market infrastructures | | | | | | X |
| Rules on the protection of securities of participants and those of their clients | | | | | | X |
| Rules regarding the integrity of the issue and appropriate reconciliation measures | | | | | | X |
| Rules on cash settlement | | | | X | | |
| Rules on requirements for participation | | | | | | X |
| Rules on requirements for CSD links | | | | | | X |
| Rules on access between CSDs and access between a CSD and another market infrastructure | | | | X | | |
| Rules on legal risks, in particular as regards enforceability | | | | | | X |
| Any other rules | | | | | | X |

For the rules for which you expressed concern, please explain the exact nature of your concern, provide suggested solutions that would ensure a level playing field between different providers of CSD services, if you have any, and explain how these solutions would ensure an equivalent mitigation of risks.

**Rules on organisational requirements for CSDs**
as we argue throughout our response, to promote innovation and maximise the benefits of DLT, authorised entities should be permitted to perform CSD core services on an individual or combined basis. If this is the case, organisational and governance requirements tailored to each specific CSD core service should be considered, as well as possible network-wide requirements.

**Rules on cash settlement**
The definition of cash settlement should be technologically neutral to take into account new forms of tokenised money. In the absence of available tokenised central bank money, it should also be considered to allow for securities settlement in tokenised commercial bank money.

**Rules on access between CSDs and access between a CSD and another market infrastructure**
It is imperative that rules on access (including securities registration) are technologically neutral, in line with our proposed recommendations to allow for regulated distributed settlement.

## 3.3. Barriers and other aspects under the FCD

84) What are the main barriers to the integration of EU markets and/or consolidation of financial market infrastructures related to the FCD?

AFME believes the concepts of 'possession' and 'control' in the FCD require further clarification in order to provide additional protection to financial institutions entering into 'security financial collateral arrangements'.

In order to achieve the policy objective, AFME recommends expanding the range of permitted dealing with financial collateral beyond the existing provisions relating to substitution and withdrawal of excess collateral. The best way to provide additional protection for financial institutions is to permit incremental flexibility in order to avoid the loss of a 'security financial collateral arrangement' due to the lack of 'possession' and 'control'.

85) Is there sufficient clarity regarding the use of tokenised assets as financial collateral in the context of financial collateral arrangements under the FCD?
[Yes/No]

No, we view that the FCD should ensure that eligible "book entry financial collateral" encompass financial instruments issued on DLT, in line with the principle of technological neutrality promoted by the rest of the Submission. In addition, we also strongly encourage the eligibility of DLT-based assets as central bank collateral.

86) In the last FCD consultation, the addition re-insurers, alternative investment funds (AIF), institutions for occupational retirement provision (IORPs), crypto-asset service providers, all non-natural persons, non-financial market participants which regularly enter into physically or financially settled forward contracts for commodities or EU allowances (EUAs) was suggested by stakeholders. It was also asked if payment institutions, e-money institutions and CSDs should be added to the scope. Please provide any views you may have of one or several of the suggested potential additional participants.

**Payment and e-money institutions**
We support extending the personal scope of the FCD to include payment institutions and e-money institutions, to ensure these institutions are able to benefit from the protections and increased certainty afforded by the FCD in recognising the efficacy of netting mechanisms and giving effect to security arrangements. These protections support credit risk mitigation and efficient markets and so in general, we consider it advantageous to broaden the personal scope of the FCD.

**CSDs**
Central securities depositories are a key part of EU financial market infrastructure and so it is logical to extend the personal scope of the FCD to include them (to the extent they are not already in scope) This would be consistent with the existing scope of 1(c) FCD, which includes central counterparties, settlement agents and clearing houses. It would also be in line with the Commission's statement to cover systemically important collateral providers and takers under Article 1(c) FCD.

87) Are there barriers related to the scope of the FCD (i.e. parties eligible as collateral taker and collateral provider, definition of financial collateral, definition of cash)?
[Yes/No]

The discretion afforded to Member States in Article 1(3) to exclude collateral arrangements from scope of FCD protections where one party is an SME or other unregulated corporate entity creates additional costs and

introduces uncertainty for market participants regarding the enforceability of collateral arrangements entered into with these counterparties.
The exclusion of collateral arrangements entered into with SMEs or unregulated corporate legal entities from FCD protections limits the ability of financial institutions to provide certain derivatives, margin financing, prime brokerage and related services to unregulated clients that may, but for their lack of regulatory authorisation, organically belong in the financial markets sphere.

88) Do you see legal uncertainty related to the recognition of tokenised financial instruments as collateral under the FCD?
If yes, please describe these uncertainties.
Don’t know/no opinion

89) Do the definitions and concepts in the FCD, including the notion of ‘possession and control’, ‘accounts’ and ‘book-entry’ result in barriers or legal uncertainty, e.g. due to the change in market practices, the use of DLT?
[Yes/No]

As noted in our response to Question 84, we believe that the notion of “possession and control” would benefit from clarification. AFME has previously made recommendations with respect to clarifying that the rights of the collateral provider do not prevent the collateral taker from having “possession” or “control” of the collateral whether the collateral is held in the collateral taker’s account, via a third-party custodian or via a tri-party collateral management service provider.

AFME also supports proposals which aim to provide additional protection to financial institutions by incrementally increasing the existing flexibility to deal with financial collateral during the term of the 'security financial collateral arrangement'. These specific proposals include, without limitation, that:

- the collateral may be held in an account in the name of either the collateral-provider or the collateral-taker;
- the collateral-provider may withdraw income (e.g. interest, coupons, or dividends) which accrues on the financial collateral from the account (provided that there is no default);
- the collateral-provider may receive a copy of any notices relating to the financial collateral;
- the collateral-provider may exercise voting rights relating to the financial collateral (provided that there is no default);
- the collateral-provider may be responsible for determining the value of the financial collateral or the secured obligations;
- the collateral-provider will generally be entitled to the return of financial collateral if the collateral taker goes insolvent (provided that the secured obligations have been fully and finally discharged); and
- the provision of a standing instruction to a third-party custodian or collateral manager to provide automated substitutions, return of excess collateral or transfers or reinvestment of income (e.g. interest, coupons, or dividends).

90) Is the list of collateral providers and collateral takers limiting the applicability of the FCD in a detrimental manner for DLT-based financial collateral arrangements?
Don’t know/no opinion

91) Do you think that collateral other than cash, financial instruments and credit claims should be made eligible under the FCD, in particular in light of DLT based financial collateral arrangements?
If yes, please list what other forms of collateral should be considered as eligible and explain why.
Don’t know/no opinion

While we do not have a strong opinion on expanding the eligible collateral assets, we do note the importance of maintaining a technologically neutral approach to asset eligibility (i.e. eligible assets should have eligibility regardless of underlying technological formats, e.g. DLT).

92) Do you see the need to change the current approach that only financial collateral arrangements should be protected where at least one of the parties is a public authority, central bank or financial institution?

Please explain
Don’t know/no opinion

93) Is the non-aligned definition of ‘collateral security’ and ‘financial collateral’ under the FCD creating barriers?
[Yes/No]

As a general remark, we are supportive of efforts to harmonise definitions of key terms across EU legislation and regulation.

94) Are the opt-out provisions for Member States creating any barriers to the single market?
Don’t know/no opinion

95) Have you encountered problems with the recognition/application of close-out netting provisions under the FCD (both national and cross-border)?
Don’t know/no opinion

96) As noted in the Commission report on the review of SFD and FCD (COM(2023)345 final), given the FCD deals primarily with financial collateral and only peripherally with netting (only as one of the methods that can be used to enforce collateral arrangements), do you consider that there is a need for further harmonisation of the treatment of contractual netting in general and close-out netting in particular?
Don’t know/no opinion

97) Are there any other barriers created by the FCD which are not mentioned above?
[Yes/No]

## 3.4. Uneven/inefficient market practices and disproportionate compliance costs

### 3.4.1. Internalised settlement

99) Does the current reporting obligation of internalised settlement allow for an accurate identification of the risks stemming from settlement outside of a CSD?

[Yes/No]
We do not believe that there are material risks stemming from settlement outside of a CSD. Internalised settlement takes place on the books of intermediaries who are subject to a robust regulatory and prudential framework, and have appropriate controls in place to ensure accurate, safe, and timely settlement of internalised instructions.

The current reporting obligation provides transparency on the volume of transactions subject to internalised settlement. Creating additional reporting requirements would be costly and burdensome exercise for little to no value-add, and would not be aligned with the Commission’s regulatory simplification agenda.

100) Should settlement internalisers with very high internalised settlement activity (in terms of value and volume) be required to publish information on their internalised settlement activity including settlement fail rates (similar to the annual data on settlement fails published by CSDs)?

[Yes/No]
As noted in our response to the previous question, creating additional reporting requirements would be costly and burdensome exercise, including for NCAs, for little to no value-add, and would be antithetical to the Commission’s regulatory simplification agenda.

101) Would you identify additional risks other than operational and legal risks stemming from internalised settlement?

[Yes/No]

Again, we emphasise that we do not observe any material risks arising from internalised settlement, which allows for quicker, more efficient, and lower cost settlement.

We believe that operational risks are appropriately managed by firms' internal controls, and legal risks are managed through contractual arrangements in place with counterparties.

Internalised settlement occurs for a variety of reasons. In part, it is used for specialised activities, such as internal processes of the intermediary, or in tri-party collateral management to regularly mark positions to market, which indeed is a risk mitigation tool. The availability of internalised settlement could also be considered as a systemic risk mitigant by reducing single-point-of-failure risk in the event of a CSD outage.

We emphasise the importance of maintaining user choice. CSDR mandates that market participants shall have access to both omnibus and segregated accounts – intermediaries' clients who wish to do so can, and do, segregate their assets.

102) Should some/all rules pertaining to settlement discipline and/or other CSDR requirements currently applicable to settlement at CSD level be also applicable to internalised settlement?

[Yes/No]

The costs and complexities of implementing said rules would be completely disproportionate to the low volume of internalised settlement, and not aligned with the policy objective of regulatory simplification and burden reduction.

We note anecdotal feedback that, where a failed internalised settlement results in the breaking of the 'immunisation principle' and creates a CSDR cash penalty for a party not at fault, this can typically be resolved on a bilateral basis in accordance with the AFME guidelines.

### 3.4.2. Information sharing

AFME has not responded to this section

### 3.4.3. Authorisation procedures

AFME has not responded to this section

## 3.5. Interaction between the CSDR and other EU legislation

AFME has not responded to this section

## 3.6. Other issues on post-trading

AFME has not responded to this section

# 4. Horizontal barriers to trading and post-trading infrastructures

## 4.1. EPTF barriers

1) How do you assess the continuing importance of the barriers identified by the EPTF report and those put on EPTF watchlist (WL) in 2017?

Please rank each barrier according to the urgency of its resolution for achieving an integrated EU market for post-trade services. Please rank barriers as high/medium/low urgency (max 6 barriers per grading category). Please mark barriers that have been resolved and are no longer relevant.

<table>
<tr><th>Barrier</th><th>High</th><th>Medium</th><th>Low</th><th>No longer relevant</th><th>Do you agree with EPTF recommendations? YES/NO</th></tr>
<tr><td>Fragmented corporate actions and general meeting processes (EPTF 1)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">Fragmentation in corporate actions remains a significant operational and legal risk. We note that, whereas the Shareholders Rights Directive II (SRD II) introduced a certain degree of standardisation, important gaps persist – particularly, in regard to voluntary corporate actions, timeliness of communication and inconsistencies around interpretation across Member States. Moreover, the absence of harmonised civil law rules continues to hamper an effective exercise of cross-border investor rights.<br><br>We consider that progress towards addressing this barrier requires action across several dimensions:<br>• Address civil law issues and fostering harmonisation via a review of existing civil law and company law discrepancies<br>• Delivering a new Shareholders Rights Directive addressing gaps in existing version<br>• Promoting further adoption of latest market standards across the Union.</td></tr>
<tr><td>Lack of convergence and harmonisation in information messaging standards (EPTF 2)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">The use of diverse messaging protocols leads to inefficiencies, translation risks and increased operational complexity – particularly in cross-border environments. We note the ongoing work of the AMI-SeCo ISO 20022 TF, established to consider the potential promotion of ISO 20022 as a single messaging standard, and welcome the conclusions of their report, expected in Summer 2025.<br><br>However, we recommend that standardisation should be accompanied by:<br>• Better regulatory alignment to avoid divergence in implementation<br>• Upstream harmonisation of issuer practices and data quality. We further emphasise that the quality of information provided by the issuer – or by their first intermediary – must be of high quality. This is essential to ensure that the information is transmitted accurately, on time, and in full, throughout the entire chain.</td></tr>
<tr><td>Lack of harmonisation and standardisation of ETF processes (EPTF 3)</td><td></td><td>X</td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">ETFs have become systemically important instruments in European capital markets. However, their post-trade processing remains non-standardised, which limits interoperability, increases reconciliation breaks, and hinders cross-border access.</td></tr>
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<tr><td colspan="6">We note that some CSDs allow ETFs to be issued and settled like regular equities (e.g., via centralised issuance and T2S settlement), while others use ‘bespoke’ processes in silo to handle the primary issuance of ETFs. Moreover, the creation and redemption of ETF shares is not standardised and different CSDs may impose distinct procedures and timelines, which affect cross-border investors and market makers.<br><br>Therefore, we would encourage the development of a harmonised EU post-trade processing model for ETFs – aligned with UCITS and MiFID regimes – along with the clarification of the applicable tax and legal frameworks, including investor transparency requirements.</td></tr>
<tr><td>Inconsistent application of asset segregation rules for securities accounts (EPTF 4)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">The principle of a harmonised regulatory framework for asset segregation – as set out in CSDR – is a key foundation of the EU post-trade environment. However, its effectiveness depends on consistent interpretation and enforceability under national civil law. Without legal convergence, even a single EU regulatory requirement may lead to differing application and interpretation across Member States, particularly in terms of ownership recognition, client asset protection, and treatment of insolvency. We note that the lack of consistency on such interpretation and application of asset segregation requirements across Member States continues to pose operational risks, especially for cross-border custody chains.<br><br>We would support further work to align the regulatory and legal dimensions of asset segregation to ensure a robust and truly harmonised post-trade environment and address core civil law issues impacting segregation. Furthermore, the legislative and regulatory framework should avoid the application of duplicative or contradictory requirements of the custody chain.</td></tr>
<tr><td>Lack of harmonisation of registration rules and shareholder identification processes (EPTF 5)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">There is an urgent need to harmonise registration rules and shareholder identification processes across the EU. Currently, differences in national laws (e.g., who qualifies as a shareholder, what thresholds apply, response deadlines, formats, etc.) lead to inconsistent outcomes and inefficiencies in cross-border holdings.<br><br>To address this, harmonisation should go beyond legal definitions and focus also on the core operational and processing level, including:<ul><li>Standardised messaging formats and data elements,</li><li>Common processing timelines and deadlines across intermediaries,</li><li>Alignment of how shareholder identity requests are handled through the custody chain.</li></ul>Without this core-level harmonisation, the intent of SRD II cannot be fully realised – particularly in ensuring equal rights and timely communication for shareholders, regardless of where they are located.</td></tr>
<tr><td>Complexity of post-trade reporting structure (EPTF 6)</td><td></td><td>X</td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">The lack of harmonisation across multiple post-trade reporting requirements increases the cost of reporting and the complexity of data analysis (e.g., EMIR, MiFID, SFTR). This manifests across various dimensions: i) the data elements to be reported, ii) the intermediary channels by which the data is reported.<br>We would recommend the standardisation of certain data elements by aligning reporting fields and definitions across EU regulations, and to establish a single reporting mechanism that consolidates multiple regulatory reports.<br><br>Moreover, EMIR requires dual-side reporting, which implies higher operational costs. Single-side reporting</td></tr>
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<tr><td colspan="6">would provide visibility to measure risk of open positions. We suggest that EU regulators could consider the possibility of simplifying EMIR regulatory requirements by allowing for single-side reporting.</td></tr>
<tr><td>Unresolved issues regarding reference data and standardised identifier (EPTF 7 (formerly Giovannini Barriers 8 and 9, redefined and combined)</td><td></td><td>X</td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">We note that significant progress has been made on the adoption and availability of Legal Entity Identifiers (LEIs), which has helped improve data quality and transparency. However, challenges remain in other areas of reference data – particularly around standardised identifiers for instruments, counterparties, and corporate actions.<br><br>We would recommend for EU regulators to continue providing regulatory support for a broader adoption of global identifiers (e.g., UTIs, ISINs, etc.) across post-trade processes.</td></tr>
<tr><td>Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCPs' default management procedures (EPTF 8) (formerly Giovannini Barrier 14)</td><td></td><td></td><td>X</td><td></td><td>Yes</td></tr>
<tr><td colspan="6">We agree with and support the EPTF recommendations. However, while this remains a theoretically important issue, we have scored this as 'Low' priority given that this has infrequently manifested into real-world issues, in the experience of AFME members.</td></tr>
<tr><td>Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book entry securities (EPTF 9) (formerly Giovannini Barrier 13)</td><td></td><td></td><td>X</td><td></td><td>Yes</td></tr>
<tr><td colspan="6">We agree with and support the EPTF recommendations. However, we have scored this as 'Low' priority given that the broader regulatory framework – including CSDR and MiFID II – provides for the protection of client assets. Generally, the post-Global Financial Crisis reforms have been effective in strengthening asset protection, and we recognise significant progress has been made.</td></tr>
<tr><td>Shortcomings of EU rules on finality (EPTF 10)</td><td></td><td>X</td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">We agree with the EPTF's recommendations in principle, as legal certainty around settlement finality is a cornerstone of safe and efficient post-trade infrastructure. However, from the perspective of AFME members, this is not a day-to-day operational problem. The existing rules under the Settlement Finality Directive (SFD) generally function well in practice for most commonly used systems.<br><br>That said, there are certain edge cases – such as the interaction between finality and national insolvency laws, or the treatment of non-designated systems – that can still create legal uncertainty, particularly in cross-border scenarios.</td></tr>
<tr><td>Legal uncertainty as to ownership rights in book entry securities and third-party effects of assignment of claims (EPTF 11) (formerly Giovannini Barrier 15)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">We note that this legal ambiguity continues to impede the development of a fully integrated EU capital market. In a cross-border environment, the lack of harmonised rules on who owns book-entry securities, and how</td></tr>
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<tr><td colspan="6">claims over them are transferred to third parties, creates uncertainty for investors, collateral takers, and lenders.<br><br>We recommend that EU policymakers should engage with Member States to clarify and harmonise the legal framework around book-entry securities and third-party rights. This would strengthen legal certainty, investor protection, and cross-border market integration.</td></tr>
<tr><td>Inefficient withholding tax collection procedures (the lack of a relief-at-source system) (EPTF 12)</td><td>X</td><td></td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">Inefficient and inconsistent withholding tax procedures remain a significant barrier to cross-border investment within the EU. Investors often face delays, uncertainty, and high administrative costs when trying to reclaim tax withheld in excess of treaty rates. In many cases, tax relief is only available through lengthy refund processes, which can take months or even years. In addition, the absence of a consistent and clearly articulated definition of the term “beneficial ownership” can make it difficult to determine how relief procedures should be applied in practice.<br><br>In this context, we note that the Commission’s FASTER proposal represents a positive step forward. However, we would encourage a more ambitious and harmonised approach, including a true relief-at-source framework that is consistently applied across Member States and the setup of standardised documentation and digital procedures for tax relief.</td></tr>
<tr><td>National restrictions on the activity of primary dealers and market makers (WL1)</td><td></td><td></td><td>X</td><td></td><td>Yes</td></tr>
<tr><td colspan="6">As a matter of principle, we strongly emphasise that there should be no restriction on user choice on the settlement location of transactions. In practice, this issue appears to be limited to specific Member States or instruments, and we have therefore considered it a ‘Low’ priority in terms of urgency. However, it remains important to monitor for any new or expanding restrictions, particularly those that may conflict with the objectives of the SIU.</td></tr>
<tr><td>Obstacles to DvP settlement in foreign currencies at CSDs (WL2)</td><td></td><td></td><td>X</td><td></td><td>Yes</td></tr>
<tr><td colspan="6">Delivery-versus-Payment (DvP) in foreign currencies is an important enabler for cross-border investment, efficient collateral management, and international issuance. However, most EU CSDs currently do not support DvP in non-euro currencies, thus limiting market participants’ ability to settle transactions in instruments denominated in USD, GBP, or other major currencies.<br><br>While AFME members consider that this is not currently a widespread operational issue, the lack of harmonised and scalable solutions may become more significant in the future – particularly with increased internationalisation of issuance, and growing demand for efficient settlement in multiple currencies.</td></tr>
<tr><td>WL3: Issues regarding intraday credit to support settlement (WL3)</td><td></td><td></td><td>X</td><td></td><td>Yes</td></tr>
<tr><td colspan="6">Intraday cash credit is typically provided by the National Central Banks (NCBs) of the Eurosystem. This credit is secured by collateral, normally held of managed within the CSDs or via links with CSDs. In markets where the CSD is connected to T2S, the NCBs provide central bank money in T2S to settle the securities, and T2S offers auto-collateralisation against securities held in participating CDs. In non-T2S markets, cooperation is required between the local NCB and the CSD in order to facilitate the service.<br><br>In this respect, T2S CSDs could leverage the existing T2S functionality, whilst CSDs outside of T2S should align by having a similar mechanism in place in central bank money.</td></tr>
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<tr><td colspan="6">Moreover, we wish to note that the ongoing industry work towards T+1 settlement should help to provide the impetus to identify and resolve any remaining issues with intraday credit usage, at a market-wide level.</td></tr>
<tr><td>Insufficient collateral mobility (WL4)</td><td></td><td>X</td><td></td><td></td><td>Yes</td></tr>
<tr><td colspan="6">Collateral mobility across the EU has improved significantly in recent years – particularly with the implementation of T2S, the rise of tri-party services and initiatives such as ECMS. However, barriers remain, especially in cross-border scenarios, where fragmentation in legal frameworks, account structures, and settlement processes continue to limit efficient collateral transfer and reuse.<br><br>We note that, while ECMS represents a significant step on the harmonisation of collateral management for Eurosystem operations, it covers only a specific set of assets and use cases. Broader challenges to private-sector collateral mobility remain – particularly around tri-party interoperability, legal uncertainty, and operational fragmentation – and must be addressed in parallel.<br><br>We recommend that further harmonisation of collateral handling processes and settlement windows across CSDs is required, along with improving the interoperability between CSDs and tri-party agents.</td></tr>
<tr><td>Non-harmonised procedures to collect transaction taxes (WL5)</td><td></td><td>X</td><td></td><td></td><td>No</td></tr>
<tr><td colspan="6">The EPTF report envisaged the potential creation of a pan-EU financial transaction tax. (FTT) Although we recognise that non-harmonised national transaction tax procedures (e.g. FTTs in Spain and Italy, or stamp duties in other jurisdictions) do create operational complexity in post-trade processes, we do not support the creation of a pan-EU FTT.<br><br>A hypothetical EU-wide FTT would be detrimental to the SIU's objectives of integration and harmonisation, since Member States would likely apply it unevenly (e.g., by opting out, applying different exemptions, etc.). Furthermore, it could have an impact on liquidity considerations, since trading volumes could shift to non-EU financial centres to avoid the tax, ultimately affecting the competitiveness and attractiveness of EU capital markets.</td></tr>
</table>

## 4.2. Leveraging cross-border operational synergies between entities (outsourcing, treatment of group structures)

2) On a scale from 1 (it is inadequate) to 5 (it is adequate), do you believe that the current regulatory and supervisory set-up as regards outsourcing is adequate, and captures the risks linked to outsourcing appropriately?

SCORE: 2

If you responded 4 or less, please point to specific issues and to possible improvements, including, where relevant, any distinction between intra- and extra-EU outsourcing.

The EBA Guidelines on outsourcing arrangements provide specific guidance on the relationship between financial institutions and their service providers, setting out the internal governance practices that in-scope firms should abide by when outsourcing critical functions. The EBA guidelines are silent on the question 'is custody outsourcing?' which has led to both in-scope firms and supervisory bodies developing their own individual interpretation regarding whether the EBA guidelines are applicable to the provision of custody services. A critical component of this analysis is determining whether the services provided by the custodian could otherwise be undertaken by the client themselves.
First and foremost, it should be noted that the vast majority of financial entities within the global chain of custody cannot directly access a CSD due to the high barriers for entry. In these instances, it is critical that the appointment

of a global custodian should not constitute outsourcing since the client could not meet the required criteria to become a direct CSD participant and hence cannot carry out the provision of custody services themselves.

In this instance it is clear that the lack of harmonisation of approach to outsourcing across Member States' runs counter to the objectives of the EU Savings and Investment Union. The EU's Competitiveness Compass specifically addresses some of the challenges outline above in its aim of "making it easier for companies to operate across the EU by simplifying rules and law". It also results in significant additional complexity for both the clients and providers of custody services.

As discussed above, core custody and depositary services are subject to comprehensive regulatory frameworks within the EU. From a policy perspective, layering further regulatory expectations on custody/depositary arrangements creates unnecessary complexity by mixing well-established practices with new and unclear requirements that are not well-adjusted to the nature and functioning of custody arrangements. It is an increasingly challenging environment for many regulated firms who need to comply with the multiple sets of outsourcing requirements on a national level. For example, outsourcing rules in Italy require service providers to obtain prior consent from the client before changing sub-outsourcing arrangements. However, if a local sub-custodian were to lose its licence or any number of scenarios occur which call into question the robustness or good standing of the sub-custodian, the global custodian would be obliged to appoint a replacement without delay so as to avoid any detrimental impacts to the client such as being unable to trade their securities held in custody.

The purview of legislation which has extra territorial impacts in other regions is current topic of debate, as the actual effective of this legislation essentially requires EU firms to interject themselves into the operations and management of services being delivered by custody firms which are subject to their own local regulation, regulatory guidance and market practices (potentially including CSD rule books). Given the current and rapidly shifting geopolitical situation, it may be prudent to limit such wide-ranging legislative requirements which would have a significant on the global network in isolation in comparison to common trends in global financial services regulation.

We would suggest that there is a review of the EBA Guidelines to include an explicit clarification on the application to custody services. This position could be articulated by clarification set out within a frequently asked question or a set of questions & answers issued from the EBA, neither of which would disrupt the material application of prudential outsourcing regulation of firms and other exiting custody regulation. This would ensure that all Member States are notified that custody should not be considered outsourcing and would end the regional fragmentation which is highlighted above.

AFME has not responded to the remaining questions in this section.

## 4.3. Issuance

8) Please describe the steps and how long it takes to issue securities (and, if applicable other financial instruments) in your Member State, and indicate which steps could work better, in particular if undertaken cross-border (i.e. CSD and/or trading venue is in another Member State).

The steps to issue securities and how long it takes, varies for different products. There are a wide range of possible financial instruments that may be issued and there are wide differences in the range of procedures that are applicable in various jurisdictions. While an IPO, for example, may be quite complicated and complex, a plain vanilla bond offering under an established program would be rather straightforward.
We have outlined the numerous steps and stages of a typical of the IPO process below:

- Selection of the Joint Global Coordinators, Local and International counsel, auditors and any other third-party experts or consultants your jurisdiction might require, including industry consultants.
- Begin the legal, business, and accounting due diligence process, including detailed management presentations and site visits (if required) among other things. Comprehensive review of the company's business and

operating plans, corporate records, material contracts, litigation, and intellectual property.

- Discussing and compiling evidence to draft and support the accuracy of certain factual assertions made by the issuer in the offering document and in the draft pre-marketing and marketing decks. This can be a time-consuming and team intensive process, but regulation is unlikely to ameliorate this.
- Finalising the disclosure in the offering document. This process is perhaps the most time-consuming part of the process (of course depending on the status of the issuer (i.e. a first time, versus a seasoned, issuer) or the circumstances of the transaction.
- Continuing to conduct (or help the underwriters conduct) due diligence exercises.
- Permitted meetings and other interactions with limited numbers of targeted investors for early-stage familiarisation and feedback (pre-marketing introduction meetings) and with research analysts at the syndicate banks to discuss the company, its businesses, and its strategy, and, again, where permitted, to review management's projections for the next several years.
- The parties will then:
  - prepare roadshow slides for use on the roadshow (see below).
  - negotiate and finalise certain ancillary agreements including the underwriting and lock up agreements.
  - discuss valuation with a view to filling in the targeted price range.
  - Conduct the roadshow, including a "teach-in" to the relevant sales forces and group meetings (typically lunches) with buy-side institutional investors as well as one-on-one meetings with the largest institutional investors. An early roadshow meeting recording is usually made available to retail investors on the internet.
  - Build the order book, which results in a pricing recommendation by the underwriters and a determination of the price of the securities as well as determine allocations of the securities.
  - Finalise and sign the underwriting agreement
  - Finalise the purchase and sale of the relevant securities.

Post IPO activities would include any price stabilisation and any other related actions taken after that IPO offering. We might typically expect the entire process described above to be completed within 4 to 6 months, again depending on the nature of the security, the type and condition the issuer market conditions, regulatory processes and approvals, and macroeconomic factors.

9) What are the main barriers to the smooth functioning of processes related to pre-issuance and issuance in an integrated EU market? In answering this question, please consider all of the following, but not limited to this:

- legal requirements;
- supervisory practice;
- differing or lack of data exchange standards (exchange of non- machine-readable data;
- market practice;
- differences in national requirements;
- technical/technological aspects.

We see inefficiencies and confusion around certain issues such as required signatures. Some countries require the signature of a judge, others that of notary, for example. These differences make the process longer and more complicated.

In many cases, there are also uncertainties about the date of the authority's signature and the settlement date.

We would support a more unified European approach that would provide greater consistency and certainty.

10) Are there barriers related to the settlement period of primary market operations?

There are certain aspects of the settlement process that we believe can act as barriers to a timely and efficient settlement process.

One example relates to settlement of convertible bonds. With respect to new securities, if some investors do not provide the cash on the required date, the settlement agent will provide the cash and then attempt to recover the cash from the investors. However, this is not possible in a buyback situation if investors are not matched at the settlement date (in buybacks of convertible bonds there is rarely one single settlement, which usually occur on different dates because all investors are not in the system on the first settlement date.

11) Are there barriers related to ISIN allocation, or relating to the length of ISIN allocation processes?
If so, could any of these barriers be addressed through legislative changes?

We do not see barriers to ISIN allocation as a significant problem for share or rights offerings, as the securities in question must be immediately fungible and ISINS are therefore recognised a long time in advance, and for an IPO this happens very early in the process.

12) Should the attribution of ISIN be further regulated, e.g. introduction of a 'reasonable commercial basis' clause, or the prohibition of entities active in closely linked activities (e.g. settlement-related activities) from performing tasks as national numbering agencies?

Don't know

13) Should measures be taken to create more competition in the area of ISIN attribution and, if so, please explain what measures?

Don't know

14) Are there barriers related to the lack of a harmonised approach for investor identification and classification?

It depends on what is meant by a "harmonised approach" for investor identification and classification. The nature of any shares issued must be compliant with the relevant local laws and rules. There is very limited history of issuers issuing shares outside of the local CSD.
As outlined elsewhere in our response (e.g. question 39 of section 3), the absence of a harmonised definition of shareholder across member states can be considered as a barrier to cross-border investment.

15) Are there barriers related to the lack of automation and straight- through processing along the issuance value chain?

Don't know

16) Are there barriers related to the exchange of data between the stakeholders involved in the issuance?

We are not aware of any significant barriers to the exchange of data, other than those related to secrecy and confidentiality considerations.

17) Are there any other barriers related to issuance which are not mentioned above?

Don't know

18) On a scale from 1 (very complex) to 5 (very straightforward), what is your assessment of the current procedures for issuing debt or equity instrument in the EU, in particular for the first time?

SCORE: N/A

This is a difficult question to answer because of the wide range of possible financial instruments that may be issued

and the fact that there are wide differences in the range of procedures that are applicable in various jurisdictions. While an IPO, for example, may be quite complicated and complex, understandably so, a plain vanilla bond offering under an established program would be rather straightforward.

19) In particular, what is your assessment of the level of competition in the area of underwriting, and of the level of fees for such services? Do you perceive that they can be a significant barrier for those issuers considering issuing financial instruments (debt or equity)?
If so, what are the drivers for such difficulties?

We consider that the level of competition is very high. There are a high number of providers offering underwriting services and as such there is fierce and deep competition in this area. This has been successful in continuously driving down underwriting costs. Our members' view is that such fees are significantly lower in the EU compared to other jurisdictions such as the US.

20) On a scale from 1 (very unsatisfactory) to 5 (very satisfactory), what is the level of transparency of fees structures in the area of underwriting satisfactory?
If you think the level of transparency of fees structures is unsatisfactory, do you believe transparency on the prices billed to issuers and investors for such services should be provided on an ex post basis (e.g. publication of indicative prices for underwriting services) or on an ex ante basis (standard/average price lists)?

SCORE: 5

Highly transparent and sufficient. This has been highly regulated and well disclosed for years.

21) Would a front-to-end pan European platform as proposed by the ECB in 2019 (European Distribution of Debt Instruments (EDDI) initiative) solve the barriers and obstacles identified in the previous questions?
Don't know

22) Are you satisfied with the current level of digitalisation of the bookbuilding process?

[Yes/No]

If you responded "No" to the previous question, is there any legislative measure that could be taken to support more digitalisation? If yes, please explain.

We are generally comfortable with the current level of digitalisation of the bookbuilding process, but note that considerations continue as to what if any areas of bookbuilding and allocating and placing might benefit from further digitalised processes or options.

## 4.4. Innovation – DLT Pilot Regime (DLTPR) and asset tokenisation

23) Do you believe that the DLTPR limit on the value of financial instruments traded or recorded by a DLT market infrastructure should be increased?

Yes.

HIGH PRIORITY.

Given evolving market dynamics and in order to boost competitiveness, we recommend removing the thresholds in the DLTPR Regulation. This would allow for maximum flexibility and ensure that the DLT Pilot Regime remains competitive and attractive, and facilitate market growth and integration. Alternatively, the Commission can consider the ability to lift the caps through a supervisory mechanism.

Increasing limits under the DLTPR and expanding the eligibility of participants would significantly enhance the attractiveness of the DLTPR to large financial institutions and encourage the growth of DLT-based markets. Such institutions require more certainty on the end state of the Pilot Regime (and that they are not just moving from one testing environment to another), in order to make necessary investments to participate.

Given the authorisation and supervision requirements, we do not view that increasing limits would introduce additional risk. We similarly do not view that eliminating the requisite requirements for CSD authorisation to operate a DLT SS would increase risk, as long as the settlement service to be performed (e.g. notary, maintenance of securities accounts, and settlement) is subject to individual authorisation, supervision, and governance requirements.

24) Do you believe that the scope of assets eligible within the DLTPR should be extended?

Yes.

MEDIUM PRIORITY.

We believe that the scope of assets should be extended to also include money market instruments and emissions allowances. These instruments are covered by sandboxes in other jurisdictions, e.g. the UK's Digital Securities Sandbox. In addition, we also support the inclusion of securitisation under the DLTPR.

25) Do you believe that the DLTPR should be extended to cover other types of systems, such as clearing systems?

Don't know.

LOW PRIORITY.

At this stage, we do not have strong views about extending the DLTPR to cover other types of systems, such as clearing systems.

26) Should the DLT trading and settlement system (DLT TSS), allowing for trading and settlement activities within a single entity, become embedded into the regular framework (CSDR, MIFID)?

Please explain your reply, noting in particular the risks and the benefits.

Yes.

Embedding this change in the regular framework would allow for maximum regulatory certainty. With appropriate activity-based regulation and supervision, there should be limited risk to allowing for trading and settlement activities within a single entity.

27) What other changes to the DLTPR are needed to ensure that it remains a framework that is fit for the purpose of allowing new entrants and established financial companies to deploy pioneering innovation with DLT in the EU, while also ensuring appropriate risk mitigation?

Serious obstacles to the development of the DLTPR include 1) the burden of obtaining authorisation as a specialised CSD by an investment firm/credit institution if they wish to operate a DLT SS, 2) lack of collateral eligibility for securities issued through the DLTPR, and 3) general lack of incentives for participants.

Authorisation as a CSD cannot be attained easily - due to commercial and regulatory constraints – by credit institutions and investment firms. While an investment firm/credit institution could perform the core functions of a CSD through the DLT TSS route, this would require the set up and operation of an MTF, which is prohibitive for many investment firms/credit institutions that do not wish to commercially carry out trading venue activity. We consider that the DLT SS function should be a most appropriate route available for investment firms/credit institutions to perform the CSD core functions under the DLT Pilot Regime. However, for it to be workable, it requires eligibility expansion (i.e. removal of the requirement to be authorised as a CSD) and revision of the requirements/exemptions accordingly. To further facilitate participation in the Pilot Regime and boost secondary

market liquidity, it should also be allowed for a consortium of DLT SS and DLT MTFs to be authorised as a DLT TSS. In addition, subject to meeting DLTPR participation requirements, we view that there should be more automaticity in granting the derogations available under the regime and clarity on authorisation timeline, to allow for maximum regulatory certainty on firms' decisions for participation and to justify their investments.

To further incentivise participation, we support the EU to explore bond subsidy schemes, which can help EU-based institutions reinforce the business case for innovation and offset the expenses associated with DLT-based issuances. For example, HKMA's Digital Bond Grant Scheme significantly helps to promote DLT-based issuances by providing a two-tiered grant for fifty percent of the Eligible Expenses for each qualifying issuance.

28) What type of below-specified changes to the DLTPR would improve business certainty and planning for businesses that are considering to join the DLTPR?

Please rank each set of changes on a scale of 1-5 (1 denoting 'least important').

- remove the references in the DLTPR to the limited duration of licenses; SCORE: 5
- size-proportional requirements within the DLTPR, whereby the greater the size of the business of the DLTPR participant (e.g. measured in terms of volume of transactions traded/settled), the greater the compliance obligations; SCORE: 3
- clearer regulatory pathways to 'graduate' into the 'regular' CSDR framework; SCORE: 5
- other. SCORE: 5

Please explain your reply. Where possible, please include examples from other jurisdictions that can serve as a model.

The limited duration of the DLTPR and uncertainty around the pathway to 'graduate' into the 'regular' CSDR framework have significant implications for financial institutions considering to participate in the DLTPR. However, what is even more important is for firms to have clarity on which derogations from CSDR can be obtained by entrants on a permanent basis. For example, the UK Digital Securities Sandbox serves as a good example for switching off requirements under CSDR for entrants – in a safe and sound manner - in order to facilitate new models of securities registration and settlement and activity-based regulation optimising the benefits of DLT.

29) Does the DLTPR create a sufficiently clear and flexible framework for the use of EMTs as a settlement asset, bearing in mind the overarching need to ensure high level of safety for cash settlement in DLT market infrastructures?

Don't know

30) Do you think that in addition to, or instead of the current derogations-based approach (allowing switching off of certain MIFID and CSDR provisions), the DLTPR should take a principles-based approach whereby high-level provisions govern trading and settlement services, with the purported aim of creating more flexibility for deploying innovative DLT-based projects?

Yes.

We are strongly supportive of the DLTPR taking a principles-based approach to regulating trading and settlement services at the level of individual functions and services (e.g. notary, maintenance of securities accounts, and settlement). This would allow for moving away from a wholly centralised financial market infrastructure (where services are concentrated in few actors as a result of regulatory construct and market practice) towards an integrated settlement layer with improved settlement choice and innovation in business models, whilst delivering the same regulatory outcome.

What would be the advantages and disadvantages of such an approach and how can the disadvantages be mitigated?

This model would have significant advantages in terms of improving settlement choice and innovation, and also in allowing DLT-based securities to fulfil key economic functions (e.g. on-venue trading and collateral eligibility). Another key advantage would be a reduction of concentration and single-points-of-failure risks. A disadvantage would the cost of moving away from current market practices relying on few, central settlement actors; however, we view that if the regulatory regime is able to facilitate innovation in business models, and DLT-based markets continue to mature, such cost disadvantages can be mitigated by potential cost savings from DLT in the medium- to long-term.

Please provide examples of principles-based standards or regulation (EU or non-EU), in the financial or non-financial domain, that may serve as a useful model or inspiration for a principles- based DLTPR, and why you think these examples are insightful.

We support the ability to perform CSD core functions at the individual service level. This concept derives from – and is completely aligned with - the IOSCO-CPMI Principles for Financial Market Infrastructure (PFMI), which define a CSD (ensuring integrity of securities issues and maintaining securities), securities settlement system (SSS), and notary functions separately. The UK Digital Securities Sandbox also serves as a useful model for allowing entrants to perform one or a combination of the CSD core functions, subject to authorisation and approval. In addition, we also note that the US Sec Reg A+/ATS framework, Singapore Project Guardian, and Switzerland DLT Act and Sandbox are useful cross-jurisdictional examples that demonstrate ways to achieve enhanced regulatory flexibility, secondary trading capability, and permanent duration.

31) Do you believe that DLT is a useful technology to support trading services in financial instruments?

Yes.

Please explain your response.

We welcome the enable of DLT MTFs for trading. This would ultimately facilitate bringing the whole security lifecycle on-chain, realising the full efficiency gains associate with the use of DLT (i.e. securities would not have to be converted between different formats throughout the lifecycle). We also foresee medium- to long-term advantages associated with on-chain venues, such as token data extraction and automation of real-time market data monitoring.

32) Do you believe there are regulatory barriers beyond those addressed by the DLTPR that may hinder or prevent DLT-based provision of trading services in financial instruments?

No.

If 'yes': Please specify and explain these regulatory barriers.

We do not believe that the regulatory system to trading needs to be adapted, apart from ensuring on-venue trading eligibility of DLT-based financial instruments and a proportionate prudential treatment.

33) For a financial entity using DLT to deploy its services, the distributed ledger is often an external platform on which services are run, and this platform may have a very distributed governance structure. What are the benefits and risks of deploying financial services, including post-trading services, on distributed ledgers external to the financial service provider, and therefore outside its direct control?

We believe that the benefits and risks of deploying financial services on distributed ledgers are well accounted for, including in the recent Commission study on permissionless blockchains. AFME has also set out a vision for the use of DLT in capital markets as part of a broader token economy; benefits include: reducing settlement risk and improving settlement choice, enhancing resilience by reducing single-point-of-failure risks, improving post-trade integration through a common settlement layer, and reducing post-trade costs. We are strongly supportive of a

vision for the future financial market infrastructure based on open connectivity and improved accessibility.

34) How should the regulatory perimeter between a technological service provider and a financial service provider, especially a CSD, be drawn in the above described DLT context?

We support a delineation between the delivery of regulated financial services and stand-alone ICT services, consistent with the approach of the EU authorities in the application of DORA. This proportionate and risk-based approach acknowledges that there is no merit in seeking to impose further regulatory requirements on highly regulated entities where existing rules provide sufficient protection. It would ensure that FMIs, including CSDs, would not be treated as a technological service provider in the context of DLT, provided the service is inseparable, indivisible, preparatory or necessary for the provision of a regulated service and is not standalone. We do not view that deploying financial services on distributed ledgers external to the financial service provider is any different to the operation of today's financial markets, in which a firm is not responsible for the operational resilience of entities outside of its direct control, including the underlying network and platforms (e.g. the internet and public email protocols) and its counterparty for a regulated financial service.

35) The Commission recently published a study on the use of permissionless blockchains for enhancing financial services, which set out operational robustness criteria for assessing permissionless blockchains. Do you believe that beyond the Digital Operational Resilience Act (DORA), additional legislative or non-legislative action is needed to ensure appropriate mitigation of risk stemming from decentralised IT systems such as permissionless blockchains?

No.

Please explain your reply.

We are strongly supportive of the findings in the Commission's recent study and the identified benefits associated with the use of public permissionless blockchains to serve as an open and neutral foundation for financial infrastructure and services. We agree with the identified operational robustness criteria (neutrality, liveness, recoverability, scalability, and transaction fees), and believe that DORA serves as a sufficient for mitigating operational risks stemming from decentralised IT systems. Under DORA financial entities will have taken into account the risks from their supply chain, including DLT providers, and must ensure they are prepared for a 'timely recovery and response' to disruptive incidents as part of their business continuity planning. However, we do acknowledge that DORA presumes the establishment of contractual arrangements between a firm and a ICT service provider, and there would not typically be such arrangements in place with a permissionless blockchain protocol providers (though the use of permissioned enclaves, legal agreements with Layer 2 protocols and/or bridge operators, and/or encrypted mempools could usefully facilitate these contracting relationships). In this context, we believe that the a number of solutions can be considered: 1) the treatment of permissionless blockchains as an underlying infrastructure (like the internet), which itself is not treated as an ICT service provider under DORA, and 2) the approach under MiCA that acknowledges the challenges associated with outsourcing on-chain services conducted on DLTs outside of firms' direct control and that which can be satisfied by firms' preparation for a 'timely recovery and response' to disruptive incidents as part of their business continuity planning.

36) Basel prudential standards on crypto exposures applicable to credit institutions assign group 2 status to tokenised assets, including tokenised financial instruments, that are issued and recorded on permissionless distributed ledgers. The transitional prudential treatment of exposures to tokenised assets in the Capital Requirements Regulation currently applicable does not make a distinction based on the type of underlying distributed ledger. Do you believe that prudential rules should differentiate between permissioned and permissionless distributed ledgers?
Please explain your reply.

No

We strongly believe that prudential rules should not differentiate between permissioned and permissionless distributed ledgers. A lack of technology neutrality in capital (RWA treatment) and liquidity regulation (incl. HQLA and LCR treatment) would undermine DLT-based market development. In particular, divergent prudential treatment can create obstacles for banks to act as underwriters and intermediaries (including market makers) for DLT-based securities, as this would unduly penalise their balance sheets. This would also lead to an adverse outcome of creating an unlevel playing field for regulated credit institutions to participate in these markets. Differentiating between permissioned/ permissionless ledgers will not only slow development and adoption, but also cause fragmentation and a lack of interoperability in private chains, and also risk pushing activity towards unregulated actors. A more effective approach is to encourage the evolution and mitigation of risks (across compliance, financial crime, and operational/technology), which will diminish over time as new solutions are found. However, this requires investment and engagement, particularly by regulated firms, as well as dialogue between regulators, financial services firms and blockchain protocol / infrastructure providers.

In addition, we strongly view that the holding of stablecoins that are robustly backed and qualified as e-money tokens and deployed in public networks (e.g. USDC/USDT) should not receive penalising risk weight of 1250%. This strongly discourages credit institutions from holding these stable and safe assets, and could lead to negative financial stability implications by driving volumes away from the regulated financial system.

37) Do you believe that risks from permissionless blockchains, in particular operational risks and other risks set out in the BIS Working paper on novel risks, mitigants and uncertainties with permissionless distributed ledger technologies, can be mitigated?
Please explain your reply.

Yes.

We generally believe that risk mitigants and solutions can address the identified risks of permissionless blockchains. As regulated market participants have gained experience with DLT, they have developed increasingly robust approaches to mitigating governance, technology, and operational risks, including cyber, third-party risk management, legal, and other non-financial risks (see below).

We view that a number risk mitigants and solutions can be effective in mitigating and reducing risks associated with permissionless blockchains, and note that many of these are already implemented by financial institutions:

- Governance risk: permissioning a subset of nodes, monitoring of blockchain's governance, blockchain ecosystem participation, and on-chain and off-chain disclosures of governance processes can support risk mitigation.
- Operational risks: existing operational risk and third-party risk management frameworks, as well as business continuity planning practices and back-up systems, can address help risks like hard forks or validator failures. In addition, enhanced monitoring of firms, including vendors nodes used for connection, can help reduce concentration risks. Other mitigants include running a blockchain node and creating internal private EVM networks.
- Legal and compliance risk: smart contract audits as well as the whitelisting of counterparties (through permissioning of Layer 2 with access restricted to certain financial institutions, and the permissioning of tokens) are useful tools. Private/encrypted mempools can also help with vendor selection and reduction / removal of gas fee risks. Blockchain analytics and identity attestation can provide further support to firms to fulfil their AML/CFT compliance, even in pseudonymous environments.

We do note, however, that this is a highly technical and multi-faceted question, and there are some risks (including the potential instability of governance mechanisms, protocol leader corruption, issues of sovereignty, and the absence of a clearly accountable entity, potential new threats from quantum computing) that remain more difficult to manage in wholesale financial markets. The adaptation of the regulatory framework should take into account the many considerations associated with the use of permissionless blockchains (including the pace of technological advancements, emerging risk mitigants and solutions, etc.). Furthermore, it is highly critical that regulation does not conflate use cases, applications, products with the perceived risks of permissionless blockchains and stifle

innovation. As permissioned versus permissionless blockchain is not a binary distinction, blockchain network assessment should be case-by-case and risk-based. We therefore encourage the EC, in consultation with the industry and other institutions, to form a public/private group to 1) consider how identified risks can be managed, 2) develop eligibility criteria for permissionless blockchains based on a risk-based approach to regulating the critical functions of FMIs.

38) Asset tokenisation concerns the use of new technologies, such as distributed ledger technology (DLT), to issue or represent assets in digital forms known as tokens. Where do you see most barriers to asset tokenisation in Europe?
Please rank each of the potential barriers on a scale of 1-5 (1 denoting 'least barriers').

- Member State securities and corporate law **SCORE: 3**
- Member State laws other than securities and corporate law **SCORE: 3**
- EU laws that relate to trading and post-trading **SCORE: 5**
- EU laws other than laws that relate to trading and post-trading **SCORE: 4**

Please explain your reply, pointing to concrete examples in areas beyond the SFD, FCD and CSDR.

We generally view that EU frameworks are more restrictive than Member State laws in the issuance of DLT-based financial instruments, and therefore policymakers should focus their attention on adapting the EU framework. CSDR is the main obstacle, followed by the SFD and then the FCD. Amongst other things, in relation to settlement EU legislation needs to ensure that 'qualifying' systems encompass DLT.

39) Should public policy intervene to support interoperability between non- DLT systems and DLT systems?
If reply is 'yes': Please explain how this can be done in a manner that is cost-efficient for the industry.
If reply is 'no': Please explain your response.

No.

While we do not believe public policy should mandate interoperability, it should encourage the reduction – and, ultimately, removal – of obstacles to interoperability between and among incumbent FMIs and new entrants, and in an end state create a common network on which value-added services and functions can be performed.

40) Should public policy intervene to support interoperability between distributed ledgers?
If reply is 'yes': Please explain how this can be done in a manner that is cost-efficient for the industry.
If reply is 'no': Please explain your response.

No.

We view that interoperability should be a natural consequence of market forces driving growth and innovation, provided a facilitative policy and regulatory environment. Public authorities should encourage interoperability through greater standardisation, without mandating interoperability. While interoperability is very important, we view that as the market matures, interoperability will naturally expand through bridges and consolidation around a limited number of DLT platforms, with the ultimate aim of creating a single European issuance and settlement area. It can be explored whether parachains and sidechains / bridges should have regulatory coverage and validation.

41) Lack of standardisation acts as a hindrance to interoperability. This is especially the case with a relatively new technology such as DLT. Where is the greatest need for standardisation in the area of DLT?
Multiple replies are possible. Please rank each of your reply from 1-5, with 1 denoting 'least important'

- Business standards applicable to digital assets (for example data taxonomy to describe digital assets) **SCORE: 5**
- Technical standards applicable to digital assets and smart contract-based applications **SCORE: 4**
- Technical standards applicable to links (bridges) between DLTs **SCORE: 4**

- Other

Please explain your reply.

We are strongly supportive of public-private initiatives to create greater standardiation, particularly for all financial instruments (whether in their traditional or DLT format) to apply the same standards for lifecycle events. This would ultimately facilitate greater investor access to financial assets and participation in European markets.

Through its global affiliate GFMA, AFME has contributed to a number of existing standardisation projects including Project Guardian (2024) and the Smart Contract Primer (2024).

42) Given how you foresee DLT-based financial market infrastructure to develop, what do you think is the best way of providing interoperability between distributed ledgers?

Please rank each of your reply from 1-5, with 1 denoting 'least important'

- regulated financial entities, such as a CSD, that are present on multiple ledgers, acting as a distributed ledger hub for clients **SCORE: 5**
- pure technology companies that focus on sending messages securely across distributed ledgers for clients that are regulated financial companies **SCORE: 2**
- regulated financial entities that focus on sending messages securely across distributed ledgers for clients that are regulated financial companies **SCORE: 5**
- some other model

Please explain your reply.

We are strongly supportive of regulated financial entities being able to provide interoperability between distributed ledgers. This should apply to all regulated financial entities, irrespective of whether they are FMIs. The aim of such interoperability should be to facilitate greater access to financial assets on DLTs, rather than solely focusing on communication and messaging.

# 5. Asset Management

AFME has not responded to this section

## 6. Supervision

### 6.1. Effectiveness of the current framework

1) How effective are current EU supervisory arrangements in achieving the objectives or performing the tasks below? Please rate each objective from 1 to 5, 1 standing for "least effective" and 5 for "most effective":

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|---|
| Contributing to financial stability | | | | X | | |
| The functioning of the internal market | | | X | | | |
| The integrity, transparency, efficiency and orderly functioning of financial markets | | | | X | | |
| The enforcement of EU rules | | | X | | | |
| The prevention of regulatory arbitrage and promotion of equal conditions of competition | | | X | | | |
| Supervisory convergence across the internal market | | | X | | | |
| Development of the Single Rule Book | | | X | | | |
| Consumer and investor protection | | | | | | X |
| Support financial innovation in the market | | | | | | X |
| Market monitoring | | | | | | X |
| Supervisory data management including data sharing | | | | | | X |
| Responsiveness, transparency | | X | | | | |
| Stakeholder engagement and involvement | | X | | | | |
| Use of resources | | | | | | X |
| Proportionality of the fees for direct supervision | | | | | | X |

2) What prevents the ESAs from reaching the objectives or performing the tasks listed in Question 1? Please explain your answer.

Established in the context of the regulatory and supervisory overhaul of EU financial legislation in response to the 2007-2008 financial crisis, the ESAs have contributed to improving financial stability, and restoring trust in financial markets.

However, we believe that the ESAs have not fully delivered on their objective to deliver on a genuine single market for capital markets.

To deliver effectively on a truly functioning single market, increase the efficiency of financial markets and promote fair competition, we think that the ESAs should duly consider - when acting as a regulator for level 2 and 3 acts (i.e. RTS/ITS and guidelines) - the competitiveness of the EU economy as whole. Adding the competitiveness objective to the ESAs' mandate should ensure that the ESAs properly factor the impact of regulatory acts on financial market participants to avoid any unjustified regulatory burden on market participants as an overly conservative framework would lead to disproportionately high costs ultimately borne by investors and companies. In this regard, concretely, we recommend that the ESAs produce in-depth impact assessments accompanying their regulatory products (levels 2 and 3) and engage early on and in a flexible way with market participants.

In addition, ESAs' responsiveness may be dramatically improved by upgrading what is commonly described as 'no action letter' but actually do not compare to those in other jurisdictions where regulatory authorities have much greater agility. It is therefore urgent to establish a level playing field. The ESAs and EU supervisors should be allowed to refrain from enforcing a rule should it be objectively justified. The lack of such flexibility leads to uncertainty costs for firms and undermines trust in the regulatory system. Efficient capital markets need

predictability to be able to serve their clients in the best way possible and compete effectively on global markets. With a wide range of regulatory reviews having been completed over recent years and now requiring implementation, which entails producing a significant suite of level 2 and level 3 products by the ESAs, the ability to introduce temporary no action relief is also likely to be helpful in enabling smooth regulatory implementation.

3) Please assess ESMA's governance model currently in place for the direct supervisory mandates. Currently, the Board of Supervisors adopts supervisory decisions prepared either by ESMA staff (for example for credit rating agencies (CRAs)) or the CCP supervisory committee (for tier 2 third country CCPs).

Don't know/no opinion

## 6.2. Specific questions on supervisory arrangements for different sectors

AFME has not responded to this section

## 6.3. Questions on the supervision of EU CSDs

AFME has not responded to this section

## 6.4. Questions on the supervision of EU CCPs

AFME has not responded to this section

## 6.5. Questions on the supervision of significant EU trading venues

AFME has not responded to this section

## 6.6. Questions on the supervision of funds and asset managers

AFME has not responded to this section

# 7. Horizontal Questions on the supervisory framework

## 7.1. New direct supervisory mandates and governance models

1) Would you agree that EU level supervision is beneficial to achieve a more integrated market? Please provide your answer by choosing from 1 (strongly agree), 2 (rather agree), 3 (neutral), 4 (rather disagree), 5 (strongly disagree), (no opinion)

**Score: 2**

Please explain your reply highlighting benefits and downsides

At high-level, a more integrated supervisory architecture for some market infrastructures would be on balance a positive development as it can significantly contribute to reducing cross-border frictions and act as an enabling factor for the consistent application of the single rulebook. At the same time, the politically sensitive debate on EU supervision should not be at the expense of potentially more fundamental aspects of the SIU agenda and of the broader objective of simplification.

In terms of EU supervision, priority should be given to granting the ESAs with effective forbearance powers when acting as supervisors and incorporating the objective of competitiveness in the ESAs mandate as a secondary objective to their regulatory function.

The current forbearance powers ('no-action letters') lack flexibility leading to uncertainty costs for firms and undermines trust in the regulatory system. We strongly believe that the ESAs and EU supervisors should be allowed to refrain from enforcing a rule should it be objectively justified. Such power exists in other jurisdictions where supervisors have much greater agility to introduce temporary no action relief to take into account market developments and ensure smooth regulatory implementation. Such supervisory agility can also be a powerful driver of competitiveness.

When acting as regulators, the ESAs should duly consider the impact of their standards, including level 3, on market participants and the broader EU economy. As in other jurisdictions, the objective of competitiveness should be incorporated to the mandate of the ESAs as a secondary objective. This new objective would serve as an effective measure to ensure the ESAs take into account the international competitiveness of the economy of the EU and its growth when developing level 2 legislation and guidelines. In practical terms, a first step to operationalise this competitiveness dimension would be for the ESAs to consistently carry out impact assessments which would include an analysis of whether and how their draft regulatory products and guidelines impact the international competitiveness of the EU and its economic growth. This analysis could then be subject to review by an independent body which would opine on the approach taken.

We also consider it is time to conduct an in-depth reflection to assess how the Lamfalussy process is functioning in view of the EU putting in place a more agile and effective regulatory and supervisory approach for globally competitive banking and capital markets. We are of the view that the EU needs to enhance its rule-making agility particularly for wholesale capital markets.

The current length and complexity of the EU legislative process is often a source of inefficiency. The objective should be to ease regulatory burden through better designed rules and reviews of legislative texts based on clearly identified needs and problems, unlike the current semi-automaticity at present (e.g. where legislative reviews tend to be mandated every three years and due to time constraints, it is often challenging to conduct in-depth assessment of the regulatory frameworks with proper engagement with stakeholders).

Enhancing EU's rule making agility can be a powerful way to increase the attractiveness and competitiveness of EU capital markets. To achieve this, greater discipline needs to be exercised, so that co-legislators set out the essential principles. and frame appropriate delegations in level 1 legislation whereby regulatory authorities are given

responsibility to determine the detailed implementing measures. In full respect of the EU Treaties, the ESAs should be charged with calibrating these rules based on robust data and be held accountable by the Commission and to the co-legislators for their decisions on that basis. This would allow the rule-making framework to adjust more rapidly to changing market conditions in a manner more comparable to rulemaking for markets in other jurisdictions. In this system, level 2 regulators would be able to intervene to make adjustments as market conditions (and the equivalent data) change and markets would not be dependent on opportunities to revise level 1 texts to ensure that the regulatory framework is appropriately calibrated. The Parliament and the Council would retain the ability to object to delegated acts and lawmakers as well as all stakeholders would be better positioned to critically assess the underpinning reasoning of the level 2 measures proposed. Indeed, such approach can only be conceived if further delegation goes with a robust evidence-based policy supported by high data quality and standards as noted above. This approach also goes hand in hand with the reforms related to the objective of competitiveness and ESAs' governance and powers.

2) Are there other sectors of financial services, not covered in the questions on the topic of supervision where granting ESMA new direct supervisory powers should be considered?

Not answered.

3) What should be the key objectives behind a decision to grant direct supervision to the ESMA?

Not answered.

4) What would be the costs (one off costs and ongoing costs) and savings for your organisation associated with new direct supervisory mandates at the EU level?

Not answered.

5) Which governance do you consider most suitable for a given model of direct supervision?

Not answered.

6) Would you envisage a different governance model apart from one of those outlined above? Please explain your reply.

Today, the Board of the Supervisors (BoS) of the ESAs approves all regulatory or implementing technical standards, guidelines, and other decisions. The current configuration of the BoS, where the 27 national competent authorities sit and vote, does not necessarily provide the safeguards necessary to ensure that the overall EU interest prevails. This is an issue at a time when scaling up and integrating the EU's capital markets are at the core of current policy considerations.

It therefore appears necessary to rethink the ESAs' governance arrangements to bring to life a truly single market for capital across the EU. More specifically, the decision-making responsibility should be allocated to a newly created executive committee, operating as follows:

- The executive committee would be responsible for approving ESAs' regulatory products, including regulatory and implementing technical standards and guidelines.
- The executive committee would be composed of the respective ESA Chair, its executive director, and a limited number of independent full-time members with a deep knowledge of financial markets.
- It would take decision via non-objection procedure, that is to say, if the BoS does not object within a defined period of time, the decision would be deemed adopted. To oppose a decision of the executive committee, the voting arrangements of the BoS should be based on those existing when the Council takes its decisions by qualified majority. For the EBA, specific arrangements should take into account the role of the ECB/SSM.

## 7.2. Supervisory convergence

Please select the ESA for which you are replying, this selection will apply to all questions included in this section.

**ESMA** / EIOPA / EBA / all three ESA

7) Please rate the effectiveness of supervisory convergence tools from 1 to 5 (1 least effective, 5 most effective)

| | 1 | 2 | 3 | 4 | 5 | No opinion |
|---|---|---|---|---|---|---|
| Breach of Union law | | X | | | | |
| Binding mediation | | | | | | |
| Peer reviews | | | | | | |
| Emergency powers | | | | | | |
| Opinions | | | | | | |
| Recommendations | | | | | | |
| Product intervention powers | | | | | | |
| Inquiries | | | | | | |
| No action letters | | X | | | | |
| Guidelines | | X | | | | |
| Colleges of supervisors | | | | | | |
| Coordination groups | | | | | | |
| Collaboration platforms | | | | | | |
| Warnings | | | | | | |
| Questions and Answers | | X | | | | |
| Supervisory handbooks | | | | | | |
| Stress tests | | | | | | |
| Union strategic supervisory priorities | | | | | | |
| other, please specify | | | | | | |

## 7.3. Increasing the effective use of supervisory convergence tools

8) Do you think that the current supervisory convergence tools are used effectively and to the extent that is possible?

Yes/No

If the answer is no, please explain and give examples

Please refer to Questions 6.1 and 7.1 for our recommendations on effective 'no action letter'

The Breach of Union Law procedure should also be revised. The experience has showed that NCAs' role to trigger this mechanism has prevented it from being used. Therefore, NCAs' voting rights should be revisited so that the Breach of Union Law procedure could be triggered by a simple majority vote, informed by an opinion issued by the Management Board. This will lead to better comparability of the way the rules are applied and enforced across the

Union.

The role and use of guidelines should also be critically assessed. Due to their ambiguous legal status, guidelines raise serious concerns particularly when adding additional requirements to levels 1 and 2 texts. Therefore, enhancing oversight over guidelines is worthwhile considering.

9) Do you think that the current governance and decision-making processes within ESAs provide sufficient incentives for the use of supervisory convergence tools?

Yes/No

No, the current governance and decision-making processes within ESMA do not provide sufficient incentives for the effective use of supervisory convergence tools.

If your answer is no, what governance changes would you propose to increase the usage of supervisory convergence tools as well as the accountability and transparency of ESAs in using these tools?

- Move supervisory convergence decision to a Supervisory Committee as described above in the governance section
- Move supervisory convergence decisions to an Executive Board as described above in the governance section.
- Other (please explain).

See our response to Question 7.1, 6). In general, the governance structures of the ESAs should be reformed. Such reforms as detailed in our response to Question 7.1, 6) should aim at increasing the level of independence and expertise of the decision-making body of the ESAs, including when using supervisory convergence tools.

10) How could the mandate of the Chair and Executive Director of ESAs be modified to allow them to act more independently and effectively in promoting supervisory convergence?

Not answered.

11) [For NCAs] Did resource constraints ever hinder or prevent the use of supervisory convergence tools?

Not answered.

## 7.4. Enhancements to existing tools

12) Do you see limitations or weaknesses in supervisory convergence tools in addressing significant divergences in supervisory practices between NCAs?

| **Supervisory convergence tool** | **YES** | **NO** |
|---|---|---|
| Breach of Union law | X | |
| Binding mediation | | |
| Peer reviews | | |
| Emergency powers | | |
| Opinions | | |
| Recommendations | | |
| Product intervention powers | | |
| Inquiries | | |
| No action letters | X | |
| Guidelines | X | |

| Colleges of supervisors | | |
|---|---|---|
| Coordination groups | | |
| Collaboration platforms | | |
| Warnings | | |
| Questions and Answers | | |
| Supervisory handbook | | |
| Stress tests | | |
| Union Strategic Supervisory Priorities | | |
| other, please specify | | |

If the answer is yes, please explain why and in which specific areas.
If your answer is yes, what concrete changes would you propose to address the limitations or weaknesses flagged and make these tools more effective?

Regarding 'no action letter', please see our response to Q6.1 '6.1. Effectiveness of the current framework'

Regarding the 'Breach of Union law', please see our response to Q7.3, 8) ' 1.1. Increasing the effective use of supervisory convergence tools'.

Regarding the guidelines, we believe that their legal status has led to confusion and we therefore encourage the Commission to clarify the role of the guidelines issued by the ESAs. It should be clear that that the guidelines are genuine soft-law instruments and therefore are not legally binding acts and as a consequence can't lead to sanctions by supervisory authorities.

13) ESAs founding regulations and sectoral legislation lay down the requirements to delegate tasks and responsibilities both from NCAs to ESAs or from ESAs to NCAs. This tool has been rarely used. What kind of changes would be warranted to increase its usability?

Not answered.

## 7.5. Possible new supervisory convergence tools

AFME has not responded to this section

## 7.6. Data and technology hub

Please select the ESA for which you are replying, this selection will apply to all questions included this section.

ESMA / EIOPA / EBA

20) Which area(s) would benefit most from an ESA(s)' enhanced role as a data and technology hub?

A form of EU supervision would be to consolidate relevant, high-quality supervisory and market data at EU level. This has the potential to deliver efficiency gains to supervisors and market participants, provided there is no duplication of reporting. Consolidation of supervisory reporting and market data would offer supervisors an EU wide view of the market and emerging risks, enabling them to apply the regulatory framework more effectively. We believe that that there are merits in exploring further the proposals along these lines from the Eurogroup and Dutch market authority.

21) In which sectors/areas would the development of supervisory technology tools (suptech, i.e. use of technology by supervisors to deliver innovative and efficient supervisory solutions that will support a more

effective, flexible and responsive supervisory system) be most beneficial to enhance efficiency and consistency of supervision? Please give examples.

Not answered.

22) How should ESAs' suptech tools be funded?

- o Privately by the supervised sector which would benefit from them
- o Charges from NCAs proportionate to the use of the tool
- o General budget (EU/NCA)
- o Combination of the above
- o Other [please specify]

Not answered.

## 7.7. Funding

AFME has not responded to this section

# 8. ANNEX

**Figure 1: On-venue trading by trading venue for selected indices (% of total by index, 2023FY)**

| | Euronext Paris | Xetra | Euronext Amsterdam | Bolsa de Madrid | Euronext Milan | Cboe DXE | Turquoise Europe | Aquis Europe | Equiduct | Cboe NL LIS | EU AMP | ITG Posit | Liquidnet EU | Other | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CAC40 | 57% | 1% | | 0.01% | 2% | 25% | 4% | 3% | 1% | 1% | 1% | 1% | 1% | 2.1% | 100% |
| DAX40 | | 62% | | | 0.1% | 24% | 4% | 3% | 1% | 1% | 1% | 1% | 1% | 2.0% | 100% |
| AEX25 | | 0.2% | 58% | 0.3% | 0.01% | 26% | 5% | 3% | 1% | 1% | 1% | 1% | 1% | 2.3% | 100% |
| ES35 | | 0.1% | 0.02% | 56% | 0.01% | 23% | 4% | 4% | 5% | 1% | 1% | 1% | 1% | 3.7% | 100% |
| MIB40 | 2% | 0.1% | | | 68% | 18% | 2% | 4% | 1% | 1% | 1% | 1% | 0.5% | 1.7% | 100% |

Fragmentation across national lines

Cross-border diversity of trading

Source: AFME

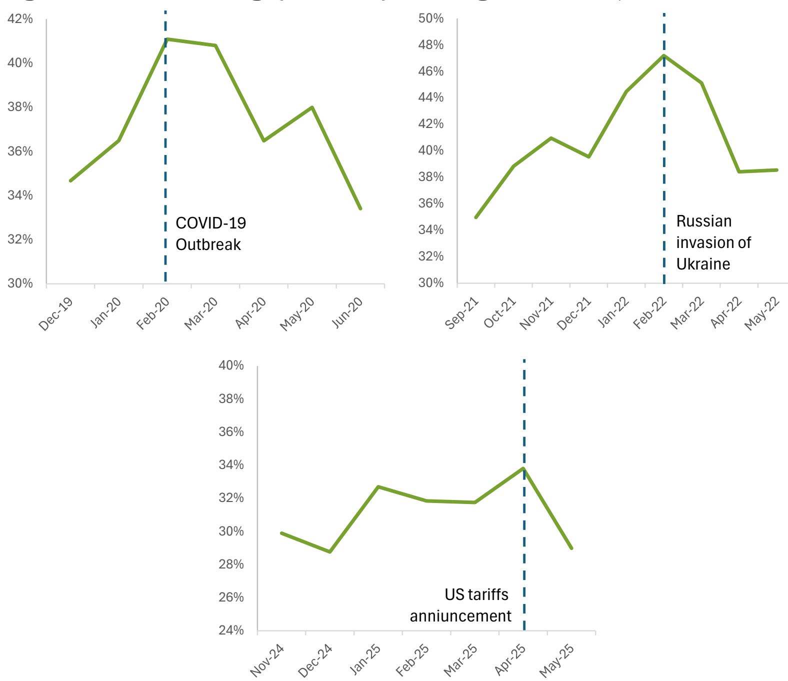
**Figure 2: On-venue DVC trading by trading venue for selected indices (% of total by index, 2023FY. Dark trading only)**

| | Cboe DXE | ITG Posit | Liquidnet EU | Turquoise Europe | Turquoise Europe Plato | EU AMP | Sigma X EU MTF | Instinet Blockmatch | Cboe BXE | Cboe CXE | Instinet Blockmatch | ITG Posit UK | Liquidnet | Other | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CAC40 | 34% | 16% | 13% | 12% | 10% | 8% | 3% | 1% | 1% | 0% | 0.2% | | | 1% | 100% |
| DAX40 | 38% | 15% | 12% | 8% | 11% | 10% | 2% | 1% | 1% | 1% | 0.2% | | | 1% | 100% |
| AEX25 | 34% | 16% | 13% | 11% | 9% | 8% | 3% | 2% | 1% | 1% | 0.3% | 0.2% | | 1% | 100% |
| ES35 | 40% | 12% | 12% | 9% | 11% | 7% | 3% | 1% | 1% | 2% | 0.2% | | 0.4% | 2% | 100% |
| MIB40 | 31% | 19% | 9% | 12% | 9% | 10% | 5% | 3% | 2% | 0% | 0.2% | | | 1% | 100% |

Cross-border diversity of trading

Source: AFME

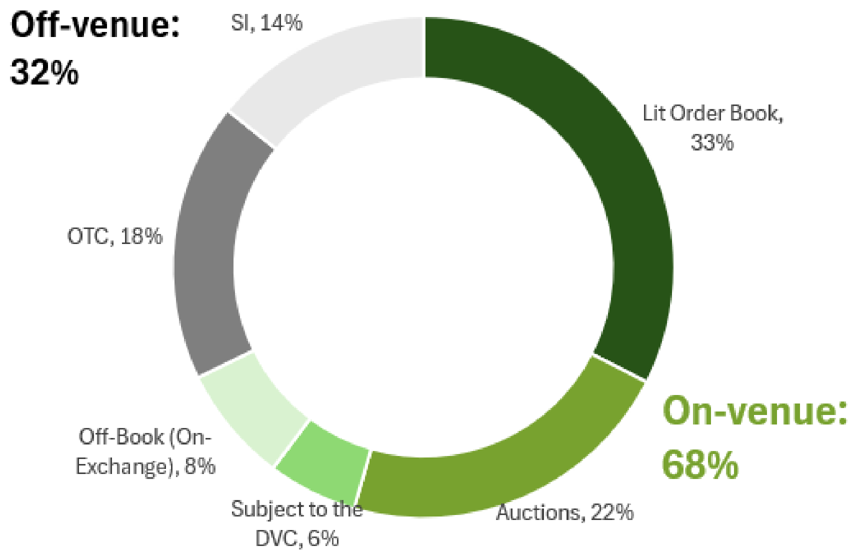
**Figure 3: Lit trading (% total) during three major market events**




Source: AFME, BigXYT

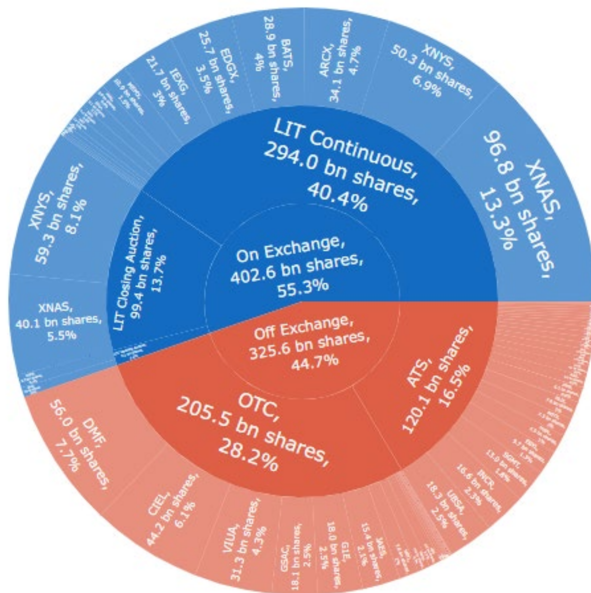
**Figure 4: Comparison between EU and US in terms of trading mechanisms: both are diverse**

Europe (2024 FY)



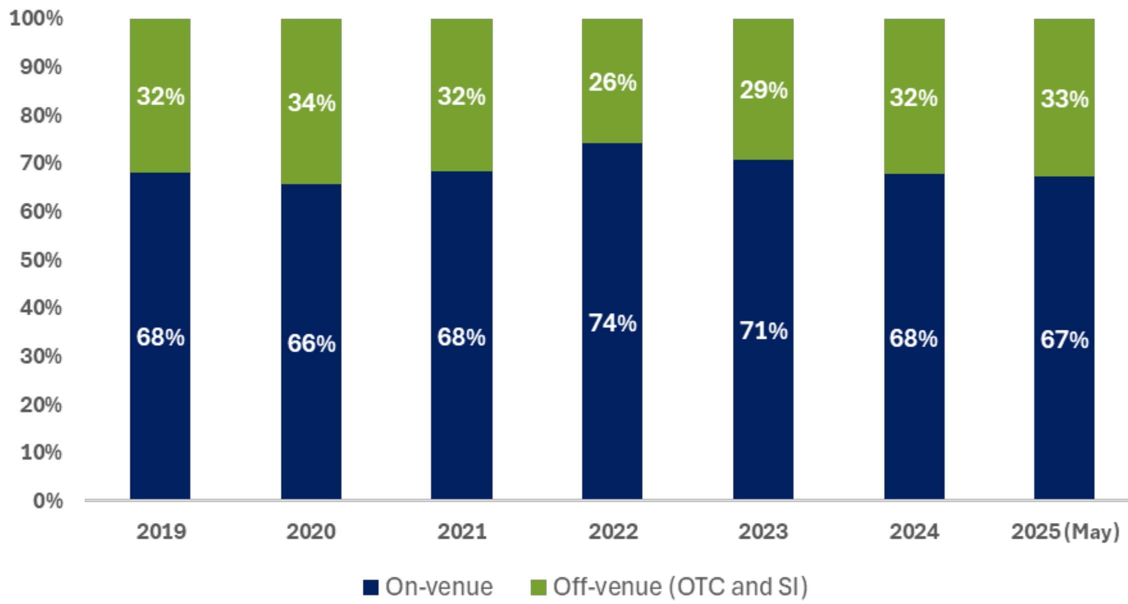

Source: BigXYT. Adjusted to exclude non addressable and non-price forming trades

US



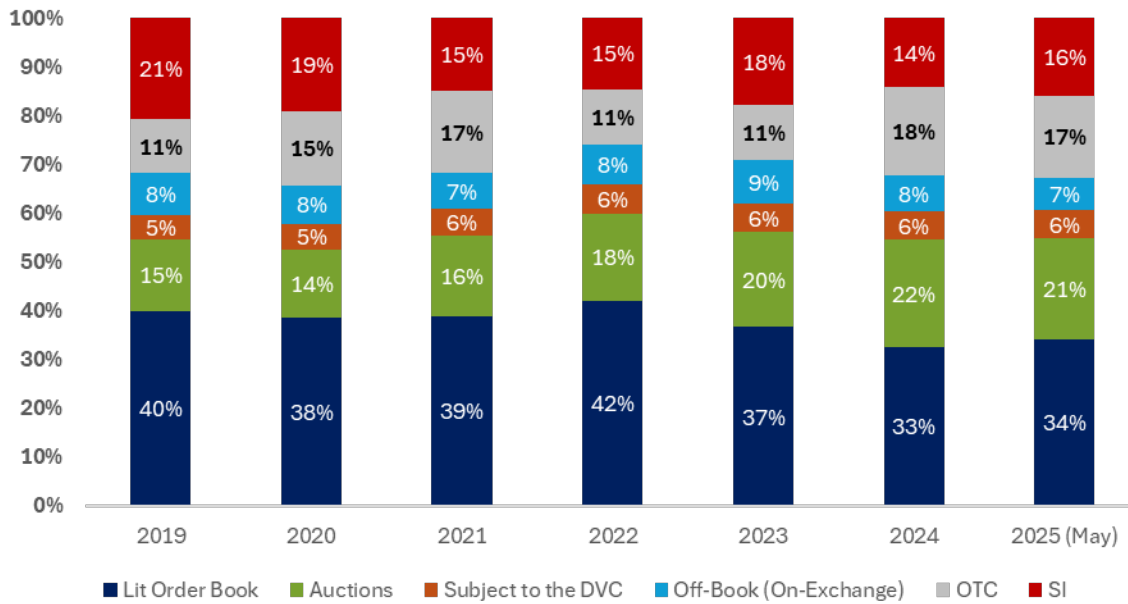

Source: BMLL, FINRA
https://www.bmlltech.com/news/market-insight/bmll-market-lens-us-liquidity-maps

**Figure 5: Equity trading: on-venue and off-venue (% total)**




Source: BigXYT. Adjusted to exclude non addressable and non-price forming trades

**Figure 6: Equity trading by trading mechanism (% total)**




Source: BigXYT. Adjusted to exclude non addressable and non-price forming trades