Contribution ID: 0b2fd949-937d-4848-b261-1eab44d0ab96
Date: 18/05/2020 20:36:42

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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

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

About you

* Language of my contribution

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

* I am giving my contribution as

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

* First name

Julian

* Surname

Allen-Ellis

* Email (this won't be published)

julian.allen-ellis@afme.eu

* Organisation name

255 character(s) maximum

The Association for Financial Markets in Europe (AFME)

* Organisation size

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

Transparency register number

255 character(s) maximum

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

65110063986-76

* Country of origin

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

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

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

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

* Field of activity or sector (if applicable):

at least 1 choice(s)

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

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

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

Trade association

* Publication privacy settings

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

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

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

Choose your questionnaire

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

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

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

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

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

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

---

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

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

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

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

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

5000 character(s) maximum

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

We welcome the European Commission's (Commission) review of the MiFID II/MiFIR (MiFID II/R) framework. MiFID II/R has had significant positive impacts on participants in European financial markets, including end investors, by harmonising key financial regulations across the European Union (EU). This has led to a more level playing field as banks operating in the EU are subjected to similar obligations, including with respect to implementation and operational running costs. Harmonisation has also benefited banks that conduct cross-border business by allowing such banks to comply with a single set of rules.

However, we strongly believe that certain aspects of MiFID II/R need recalibration in order to realise the Commission's objectives of promoting financial markets that are fair, transparent, efficient and integrated.

The existing MiFID II/R framework should be rigorously evaluated and refined (in alignment with the objectives of CMU and to support the economic recovery from the effects of the Covid-19 crisis) to strengthen and unlock the full potential of EU capital markets by increasing investor participation, deepening pools of liquidity, reducing fragmentation, improving efficiency and facilitating companies and governments financing in public markets. The regulatory framework should also promote those practices that benefit trading outcomes for end investors while providing for a more proportionate investor protection framework. We would urge the Commission to change its focus from ensuring that more trading occurs on lit venues to promoting those practices that benefit trading outcomes for the end investor.

In addition, markets that are open and competitive, with appropriate investor protection, and encompass a diverse array of trading modalities fulfil their ultimate objective of providing access to finance for issuers of all kinds and investment opportunities for savers with different levels of sophistication.

MiFID II/R has created a complex regulatory landscape with high barriers to entry and constraints on trading behaviours through mechanisms such as the share trading obligation (STO) and double volume cap (DVC), which are likely to deter global investors from accessing European markets. The STO should be revoked, or, failing that, limited to shares admitted to trading in the EEA at the request of the issuer. The DVC thresholds, if not removed, should be made flexible at the determination of the Commission to limit possible unintended impacts to end investors and to the attractiveness of the EU capital markets. AFME supports the role and function of systematic internalisers and a multiplicity of trading modalities (i.e. a diverse ecosystem of execution destinations and methodologies) in supporting liquidity provision and investor choice.

A MIFID II/R review ought to be evidence-based to solve the issues requiring an urgent fix. The review should focus on delivering fair, efficient and liquid markets while also fine-tuning the investor protection regime where experience shows that a more proportionate approach would be beneficial. Ultimately, the review should aim at improving in the EU competitiveness and connectivity globally in the near-term by enacting features that allow for enhanced outcomes for end-users, including SMEs and retail investors. Banks, trading venues, other intermediaries and vendors play a critical role in the EU's financial ecosystem, and innovative services and products that meet all regulatory requirements and help end investors and users achieve better outcomes should be encouraged.

The review should also promote increased participation of a range of investors (including retail and professional investors), as this would widen and deepen European liquidity pools. Direct retail investors participation should be carefully nurtured, whilst indirect participation of pensioners and savers, who entrust their money to asset and portfolio managers, should not be less favourably treated. Trading modalities and features that cater for each group's needs should be readily available and treated on an equal, neutral basis.

The heterogenous fixed income markets reflect a market structure that recognises both the value of risk intermediated trading and fixed income's inherent less liquid "buy to hold" trading strategies. Imposing full and immediate transparency on fixed income markets would fail to recognise the value of such risk intermediated trading for end investors and for the wider market, would expose liquidity providers to undue risk, and would negatively impact liquidity. AFME advocates that the possibility of deferring the publication of the volumes of transaction by a significant period should not be eliminated or reduced and, if harmonised across Europe, should provide for the longest deferral period currently available. All existing transparency waivers should also be preserved.

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

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

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

5000 character(s) maximum

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

As mentioned in our response to Question 1.1, MiFID II/R has had the positive impact of harmonising key financial regulations across the EU, which in turn has contributed to a more level playing field for EU financial market participants and has benefited banks that conduct cross-border business by allowing them to comply with a single set of rules.

However, there are some aspects of MiFID II/R that require recalibration. We set out below areas where change is needed, in our view.

Market structure issues, particularly the STO
The share trading obligation (STO), the double volume caps and restrictions on mid-point trading have led to inefficiencies in Europe’s equities markets, rather than progressing the objective of efficient markets. This has had negative effects on end investors, and such impacts could be exacerbated by the possibility of conflicting STOs and restricted access to liquidity pools after Brexit, resulting in investment firms being limited in their ability (in certain circumstances) to deliver best execution to EU investors. We recommend that the STO be revoked and we suggest alternative courses of action if it is not.

Transparency and reporting
AFME members observe that the post-trade reporting requirements have significantly increased transparency in the market for non-equity instruments. The MiFID II/R post-trade transparency regime is the largest transparency regime in the world in terms of asset classes and financial instruments that fall within its scope. MiFID II/R has substantially increased transparency by the simple inclusion of additional asset classes such as ETFs, bonds and derivatives in the transparency regimes. However, much of this data is currently of limited value to investors and market participants due to difficulties in normalising and understanding it.

The transparency regime would better achieve its goal by: (i) limiting the regime to EU instruments, and (ii) enhancing the usability of the data by identification of waivers, providing a clearer definition of non-price-forming (expanding OTC cases to permit other similar cases like negotiated trades), focusing the regime on instruments traded within the jurisdiction, and adding a give-up identifier. We also consider that RTS 27 and costs and charges reporting rules for wholesale clients created significant costs for limited or no benefit.

Market data costs
Market data costs have increased significantly under MiFID II/R and data licences are complex for investment firms consuming this primary input. MiFID II/R requires trading platforms to make pre-and post-trade market data available on a “reasonable commercial basis”.

Consolidated tape
AFME members believe that the provision of an appropriately constructed consolidated tape can help to build deeper and more open capital markets in Europe.

Costs and charges
The interpretation of the MiFID II/R’s costs and charges rules in relation to our members’ business with professional and eligible counterparties clients has been a substantial challenge and remains one of the most difficult rules in the regime to implement. AFME supports the disapplication of MiFID II/R costs and charges disclosures for professional clients and eligible counterparties.

Access to market infrastructure
Fair and open access to trading and clearing infrastructure is essential in a true single capital market and it is vital for maintaining integrated, safe, efficient and continuous markets. Open access leads to lower costs, deeper pools of liquidity, improved service levels, greater capital efficiency and innovation. Fragmentation often undermines the ability to achieve economies of scale that bring benefits to users of capital markets. Any further delay to the implementation of the MiFID II/R open access rules must be avoided.

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

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

Question 3.1 Please explain your answer to question 3:

5000 character(s) maximum

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

Broadly speaking, we have observed good harmonisation (in terms of both national legislation and market practice) in the implementation of MiFID II/R. This harmonisation generally works well but there are some instances of divergence across countries, including with respect to waivers, submission of transparency estimates (Large In Scale and Standard Market Size) and interpretation of some of the rules related to inducements.

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

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

Question 4.1 Please explain your answer to question 4:

5000 character(s) maximum

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

While MiFID II/R has increased transparency by the simple inclusion of additional asset classes such as ETFs, bonds and derivatives in the transparency regimes, much of this data is currently of limited value to investors and market participants due to difficulties in normalising and understanding it.

Rather than limiting waivers, the transparency regime would better achieve its goal by:

- Creating a golden source of data by addressing quality,

- focusing the regime on instruments actually traded within the jurisdiction, and

- enhancing the usability of the data by Identification of waivers by introducing (i) a clearer definition of non-price-forming (expanding OTC cases to permit other similar cases like negotiated trades), (ii) limiting to EU instruments, and (iii) adding a give-up identifier.

The MiFID II/R transparency regime is geared towards providing market transparency on traded instruments in the EEA. The concept of admission to trading extends the requirements to instruments that are not actually traded and, as such, this acts to obscure pricing signals.

It is important to address concerns regarding reference data and "traded on a trading venue". To improve reference data quality and availability, we believe ESMA's databases should be considered a "golden source" which firms could use to ascertain which instruments are "traded on a trading venue".

Within equities, we highlight the problematic linkages between the transparency requirements and the excessive breadth of the concept of "traded on a trading venue" in some circumstances.

We note that if the transparency regime for bonds, particularly the different classes of bonds is not better designed, it may have inadvertent consequences that could impact the functioning of some less liquid sovereign debt markets.

If post-trade transparency data issues above were resolved, the additional transparency provided by MiFID II /R would be significant and would represent added value to the EU.

MiFID II/R post -trade transparency reporting requirements have produced significant amounts of post-trade data, However, that information is currently published in different formats by the APAs and trading venues, not always published in a machine-readable way. Data quality issues need to be addressed to provide an accurate picture of the market. The availability of MiFIR SI pre-trade transparency has not created demand for such information. Buy-side firms continue to use consistently updated market data streams for the purposes of price discovery, together with axes and runs published by dealers.

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

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

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

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

AFME believes it is important that the Commission recognises the fundamental difference between the systematic internaliser (SI) framework and that of trading venues. An exchange does not facilitate trades using its balance sheet and instead brings together buyers and sellers by providing a matching mechanism. SIs however are offering access to their balance sheets which requires a different framework to ensure that this liquidity can continue to be offered to the European investor community within a structure that appropriately allows a firm to manage their risk.

AFME members will always support regulatory intervention where the regulatory framework does not deliver on core MiFID II/R objectives.

The concept of a level playing field between all kinds of execution venues may have limited utility. Calibration is an essential part of the MiFIDII/R framework as it ensures the delicate balance between market transparency and market liquidity. SIs play a very distinct role in financial markets and should not be considered to be substitutes or alternatives to multilateral trading venues. As mentioned above, they offer access to their balance sheets and transfer risk (often when their clients have a requirement to trade with urgency), which requires a different framework to ensure that this liquidity can continue to be offered by EU domiciled investment firms to their clients. It is worth noting that ensuing risk positions frequently need to be managed by unwinding risk through multilateral trading venues, this simply converts a client's necessity to trade urgently into a lengthier interaction with available trading venues.

Bank SIs provide investors with a trading service similar to the one corporate banks provide to businesses. The bank uses its capital and balance sheet to facilitate cheaper, more efficient and better priced investment transactions to the buy-side, which in turn benefits end investors, such as pensioners and savers, who entrust their money to asset and portfolio managers to obtain the best possible results for them.

The requirements under MiFIR have therefore been calibrated depending on whether the activity takes place on a trading venue or on an SI and based on the type and size of the transactions. In addition, the transparency rules have also been calibrated for different types of trading on trading venues including order-book and quote-driven systems such as request for quote as well as hybrid and voice broking systems. MiFID II/R is therefore trying to strike a balance between the objective of meaningful transparency whilst limiting the risks for SIs and therefore limiting the unintended consequences for the ultimate clients and/or the market of increased costs and/or reduced liquidity.

MiFIR (Recital 14) recognises that the transparency requirements under MiFIR should be calibrated for different types of financial instruments taking into account the interest of issuers and market liquidity.

AFME members therefore do not believe that SIs should be compared to trading venues as they simply offer different services.

AFME members value the role of the different kinds of execution venues and services, including multilateral venues and there is no desire to see non-exchange flow to represent the majority of execution within equities markets. However, we urge the Commission to recognise the benefits to end investors brought about through the existence of a variety of execution choices, including SIs, dark MTFs, and frequent batch auctions (FBAs) which provide a valuable and additive source of liquidity

In conclusion, AFME members strongly believe the concept of levelling the playing field across all types of execution venues fails to recognise the differences in trading mechanisms, and the roles they play in providing access to liquidity.

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

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

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

5000 character(s) maximum

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

AFME believes that MiFID II/R’s Share Trading Obligation (STO), product governance, and client classification regimes prevent investors from accessing the widest possible range of financial products meeting their investment needs.

Share trading obligation
We believe the current form of STO goes beyond its intended purpose of ensuring trading in European listed shares occurs within the EU or under an equivalent regulatory regime, and has resulted in negative consequences for investment firms and European investors by restricting their access to liquidity.

AFME recommends removing the STO as trading in European shares was already taking place in Europe before the introduction of the rule and we believe it will continue to so without it. If removal of the STO is not considered appropriate, we propose a number of amendments to make it more functional and ensure its scope of application is limited to truly European shares rather than any shares which may be capable of being traded in Europe (i.e. any shares traded on a trading venue).

Client classification
We believe that MiFID II/R’s rules regarding client classification can be overly restrictive as they do not take into account the full experience in financial markets of a retail client when considering if the client is sufficiently sophisticated to trade in a particular instrument.

Under the current client classification rules, a firm may treat a client (other than a local public authority or municipality) as an elective professional client if it complies with both a qualitative assessment and at least two quantitative criteria (set out in detail in the rules).

We believe that limb (a) of the quantitative test (e.g. “the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters”) is not fit for purpose and can be particularly problematic for newly incorporated clients with no trading history or financial instrument portfolio. AFME recommends that such clients be able to rely on the trading history or assets of their principals when endeavouring to opt up to elective professional status.

Product governance
MiFID II/R’s product governance regime has imposed operational burdens on distribution of non-complex products (such as ordinary shares and bonds, but excluding UCITS) to mass market retail investors, thereby potentially increasing the costs associated with and / or inhibiting retail clients’ access such products.

AFME asks that that the Commission considers the following recommendation when examining measures to ensure that simple investment products are more easily accessible to retail clients:

• The product governance regime should be applied only to complex products (therefore not applying it to non-complex products such as ordinary shares and bonds, but noting that such a carve out should not apply to UCITS).

Section 2. Specific questions on the existing regulatory framework

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

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

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

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

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

5000 character(s) maximum

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

The cost of acquiring consolidating and distributing the data coupled with fear of over regulation hampers market led development. Solutions exist today to the extent that they are commercially viable (e.g. Bloomberg, Reuters). Financing and governance models are therefore key. We believe that although a CT for equities may be delivered first, this could be developed in tandem with a CT for fixed income.

Question 7.1 Please explain your answers to question 7:

5000 character(s) maximum

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

AFME members believe that the provision of an appropriately constructed CT could democratise access to European markets: to provide all investors regardless of resources or sophistication with a comprehensive and standardised view of the European trading environment. However, design of an “appropriately constructed CT” raises many challenges, which must be thoroughly thought through ahead of regulation being drafted to avoid a further low-quality data source being built.

For example, if a consolidated tape provider (CTP) were to aim for a CT across all asset classes, the potential number of trading venues and APAs that would need to be considered to develop a CT consolidating all financial instruments (400+ trading venues and 20+APAs), means that a CTP could expect to pay considerable sums to maintain multiple data feeds and the right to distribute them, at least under current market data pricing policies. The CTP would need to pass costs on to end users to be commercially viable, however there is little indication that market participants would determine that the cost of consolidated data (in addition in some cases to market data generally) is a necessary expense. The result of these circumstances is that despite the appetite for a CT, costs to consumers would limit the number of firms consuming CT data (as alternative means of sourcing may prove cheaper) and therefore the commercial incentive for the emergence of CTPs.

It is also worth noting that fixed income trading is generally concentrated to a small number of trading venues (less than 5) which may present challenges when enabling venues to assist with the development of a CT.

The solution to this problem is not to impose mandatory consumption of a CT as in many cases this would mean investment firms would be forced to pay for both direct data feeds and CT data (essentially paying for the same data twice). Instead, the focus should be on reducing the cost of market data provided by incumbent exchanges who currently hold a position of significant market power from a pricing perspective. It is important to be mindful of potential CT models in which exchanges are paid twice for the same data and policymakers should therefore consider the provision of data to the CT being free of charge. Noting that a workable model for the CT has yet to materialise, it may be worthwhile to consider different models for the equities and fixed income CTs.

The solution to this problem is not to impose mandatory consumption of a CT as in many cases this would mean investment firms would be forced to pay for both direct data feeds and CT data (essentially paying for the same data twice). Instead, the focus should be on reducing the cost of market data provided by incumbent exchanges who currently hold a position of significant market power from a pricing perspective. It is important to be mindful of potential CT models in which exchanges are paid twice for the same data and policymakers should therefore consider the provision of data to the CT being free of charge. Noting that a workable model for the CT has yet to materialise, it may be worthwhile to consider different models for the equities and fixed income CTs.

We would also urge policy makers to take a phased approach to development of a CT, ensuring opportunity to consider refinements and asset specific adjustments within the timetable.

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

Please explain your answer:

5000 character(s) maximum

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

AFME members think a large part of the current legal framework can be of use for the implementation of a CT, in particular Article 65 of MiFID II which we believe captures the minimum requirements relevant to the establishment of a CT. AFME members reiterate that a CT including pre-trade data would not be desirable for fixed income markets.

However, we believe that more fundamental amendments may be necessary in the regulatory technical standards in order to further define the operation and scope of the CT.

The current regulatory standards cover the operation of both APAs and CTPs. We believe they should be differentiated. Even if they overlap in some function, they do not serve the same purpose to the marketplace.

In particular we would support the inclusion in the regulatory standard of what should be the coverage of the CT for the relevant instruments, how the CT provider should be governed the obligations and conditions under which the different market players provide the CT with the necessary data to be consolidated. This could include specifying a mandate to include post-trade price-forming trades only; that data be provided for free and that consumption should be optional to ensure there is a commercial drive to quality.

A second phase could include pre-trade data for shares. MiFID II Article 65 would need to be adjusted to enable this.

Governance and funding
Under the assumption that a fully commercial CT is unlikely to emerge, AFME believes that further thought should be given to alternative models and we stand ready to contribute and/or review detailed proposal on how such an organisation could operate. To deliver on its objectives of greater markets transparency and accessibility, the CT should not only be as representative of markets as possible, it should also be priced reasonably. To achieve this, we believe that contribution to the CT from trading venues, APAs, investment firms and systematic internalisers should be mandatory and mostly free of charge. In particular we do not believe the CTP should be considered as any other market data user. The current complexity and variation in pricing and policies would make it impossible for the CTP to deliver an end product in any form different from what is currently available, at least for equities markets.

In order to avoid creating an unlevel playing field between the CTP and other market data providers, the data provided would only be free of charge for the CTP in its delivery of the mandatory CT. If the CTP wishes to provide additional services, similar to those already commercialised by market data vendor for instance, the usual market data pricing and policies would apply.

There may be a need to consider whether different models should be adopted for different asset classes.

Minimum scope of the consolidated tape for shares
This means that the definition of the minimum scope of the CT should also be defined in the RTS. We would advocate, as explained in other questions, that the CT for equities should at minimum cover all post-trade information in real time and as a second phase could include some basic level of pre-trade transparency.

The data provided for free should only include that which is mandated by the regulation. It may be worth considering to also mandate the establishment of an EOD tick database which would be particularly helpful to the establishment of a common reference and foster strong analytics on European markets.

Fixing the data quality issues
We believe some adjustments are required to improve the post-trade data quality and deliver the full potential of the CT. We are therefore supportive of enriching the CT with further flags. In particular, we believe understanding where a transaction is price-forming and / or addressable is essential to a better understanding on equities markets.

We also believe the establishment of the CTP could be the opportunity to fix a number of technical issues. Post-trade transparency data could be improved by applying the following:

- Identifiers for all waivers
- Clearer definition of non-price-forming (expand OTC cases to permit other similar cases like negotiated trades)
- Removing the need to report non-EU instruments
- Adding a give-up identifier.

Commercialising the tape and revenue sharing
We believe the commercialisation of the CT should be affordable and simple in pricing. In particular, we do not believe the CT should be charged based on its usage or in mandating its consumption.

Revenues of the CT should be shared fairly between entities who generate market data (including investment firms and SIs), and should exclude non-price-forming trades, or otherwise include a concept of price-forming transactions, which would however make their clear identification even more essential.

1.2. Availability and price of market data

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

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

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;

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

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

Please explain your answer:

5000 character(s) maximum

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

We agree with ESMA's recommendations to strengthen the concept that market data should be charged based on the costs of producing and disseminating data and that pricing should not be proportionate to the perceived value of its usage. AFME members emphasise that a CT is not a direct solution to the problem of market data costs, market participants will still need real-time low latency feeds for which there is a cost as this data is usually bought directly from the trading venue or APA. Market data costs should therefore be dealt with in their own right and a CT should be built upon cost-effective market data.

AFME members also recommend that further additional measures be considered including but not limited to reviewing the intellectual property rights and licenses on quotes provided by and trades executed by investment firms and corporates. Additionally, we recommend establishing supervisory authorities in charge of control and aspects of costs of market data and have fee changes justified by exchanges and approved by ESMA.

Existing provisions are open to interpretation between producers and users of data
In the context of the pricing of market data, the words reasonable and appropriate are not defined within Article 7 of Commission Delegated Regulation (EU) 2017/567. The resulting ambiguity provides for room for manoeuvre in deriving a venue's cost base and therefore justifying high market data charges. The provisions also fail to set expectations for what would constitute a reasonable margin over and above costs. For this reason, producer groups have presented a number of arguments to support their view that the appropriate share of joint costs is a high one. AFME members, as consumers, and producers of data do not agree.

Incumbent stock exchanges suggest that they play a pivotal role in price formation, which they are uniquely able to provide through their status and without which, the wider market could not operate.

While we recognise that exchanges do provide some of the possible price formation mechanism, we disagree with the view that providing a pricing mechanism makes a trading venue the owner of price formation.

The status quo is maintained by a market failure: a venue with considerable market share in a security exerts high pricing power in the market data for that security. Participants must buy the data as a condition of access and to fulfil investor protection obligations (best execution) while being an active contributor to the price being formed. A venue can then use high data revenues to cross subsidise ad valorem execution fees (which are subject to competitive forces). This helps the venue to maintain its market share in the trading of the security and maintains its pricing power from a market data perspective.

Breaking the cycle described above would lead to lower market data charges for consumers and more open, resilient and deeper capital markets in Europe as well as removing cost barriers to entry in European markets.

Within fixed income markets there are far fewer EU venues through which institutional clients execute their business. For example, Government cash bonds are offered on three venues, with the majority being executed on two venues and credit cash bonds are can be traded via three venues, with the majority executed on one venue. This trading concentration across a small number of venues raises questions around the strength of the incentives for venues to price market data competitively.

Existing transparency plus provisions and guidance do not allow consumers to assess the costs allocated to production and dissemination.

To be effective, disclosures under transparency plus approach would need to include quantitative and standardised information as to how a venue had allocated costs to the production and dissemination of market data which could be compared with revenues. This would allow consumers and regulators to assess and in the case of regulators, enforce, compliance with the RCB provisions.

AFME therefore agrees with ESMA's recommendation to include Level 1 text to standardise RCB information and require that trading venues, APAs, SIs and CTPs share information on the actual costs of producing and disseminating market data. This will set clearer expectations on the expected outcome and degree of compliance with the RCB provisions. Moreover, it will allow regulators to better understand the complexity of a revenue cap approach, should a "transparency plus" be deemed insufficient.

1.3. Use cases for a consolidated tape

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	○	○	●	○	○	○
Ensuring best execution	●	○	○	○	○	○
Documenting best execution	○	○	●	○	○	○
Better control of order & execution management	○	●	○	○	○	○
Regulatory reporting requirements	○	○	●	○	○	○
Market surveillance	○	○	○	●	○	○
Liquidity risk management	○	○	○	○	○	●

Making market data accessible at a reasonable cost	●	○	○	○	○	○
Identify available liquidity	○	○	●	○	○	○
Portfolio valuation	○	○	○	●	○	○
Other	○	○	○	●	○	○

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

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

AFME members consider that there are other areas where the CT could potentially be useful including: middle and back office, model validation, performance measurement, assessment of risks (market, credit, liquidity), funding/lending/collateral tasks, pre-transaction analytics, post-trade transaction analytics, capital commitments, etc.

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

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

AFME believes that an appropriately constructed CT could help to build deeper and more open capital markets in Europe. In line with the Commission’s vision for Capital Markets Union (“CMU”), a key aim should be to democratise access across European markets: to provide all investors regardless of resources or sophistication with a comprehensive and standardised view of European trading, thereby potentially attracting more market participants, increasing market liquidity and making the market more resilient in times of crisis

AFME members do not believe that a CT is a solution to the fundamental issues regarding the cost of market data and that the costs of market data must be addressed in their own right and regardless of whether there is a CT in the EU.

A CT will be of less benefit to market data consumers that use electronic trading systems and smart order routers given that they require both full depth of book and lower latency. It would nevertheless benefit the wider market for example in market structure analysis, academic research and asset valuation.

AFME members consider that within fixed income a CT will assist with consolidating the vast amount of post-trade data that is already public but is currently published in a non-consistent format by APAs and Trading Venues. A CT will significantly increase the transparency in the fixed income market without needing to embark on complex MiFID transparency recalibrations.

We believe that contribution to the CT from trading venues, APAs, investment firms and systematic internalisers should be mandatory and mostly free of charge. In particular we do not believe the CTP should be considered as any other market data user. The current complexity and variation in pricing and policies would make it impossible for the CTP to deliver an end product in any form different from what is currently available, at least for equities markets.

AFME members do not consider the identification of available liquidity or control of order and execution management to be direct use cases for the CT. However, we would highlight that non-equities markets have different trading protocols to equities markets.

Within fixed income there are a greater amount of non-standardised instruments which have much lower liquidity; In order to provide liquidity and prices, liquidity providers take a series of factors into account such as market risk, counterparty risk, size of the order, etc., meaning the pricing of each quote requested is based on a number of factors including counterparty risk, profile and order type / size. Therefore, not all liquidity which is made transparent is available to any market participant. The available liquidity is usually identified by market participants by other non-regulatory means. Given the intricacies of both the equities and non-equities markets and the varying degree to which a CT could assist in the identification of available liquidity or control of order and execution management, AFME has rated these use cases as neutral within the Commission’s survey.

2. General features of the consolidated tape

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

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

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

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National

Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.

- **What should be the latency of the tape**: Many stakeholders argue that the tape should be "real-time", implying minimum standards on latency such as a dissemination speed of between 200 and 250 milliseconds ("fast as the eye can see"). Other stakeholders support an end of day tape.
- **How to fund the tape and redistribute its revenues**: stakeholders have mixed views on the optimal funding model. They also caution against some aspects of the US model, where the practice of redistribution of CT revenues has, in their view, provided market participants with an incentive to provide quotes to certain venues that rebate more tape revenue, without necessarily contributing to better execution quality.

---

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

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

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

Other	◯	◯	◯	◯	◯	◯

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

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

AFME believes that practical and economic realities limit the application of a CT predominantly to human consumers of data: the depth of book and latency requirements required to serve electronic trading consumers would likely lead to costs and complexities that would undermine the key aim of democratisation.

While a CT may adequately replace the existing arrangements consumed by many professional individual users, a CT will not be adequate for wholesale trading professionals or participants using electronic trading systems and smart order routers (which require both full depth of book and very low latency). Therefore, a CT should not be thought of as a solution to the problem of market data costs. Market data costs should be dealt with in their own right and an appropriate CT should be built upon cost-effective market data. With these principles in mind, the following characteristics are desirable in a European CT:

- It should be free to consume for retail users requiring data,
- Steps should be taken to ensure that trading venues and APAs make their trade data available to CTPs for free, as per "mandatory contribution", reflected under Article 90(3)(f) of MiFID II,
- It should be real-time and provide for the minimum latency that is meaningful for a human consumer. However, it is important that the CT respects the MiFID II/R deferred publication regime, such that trades which benefit from deferred publication are not published on the CT until after the deferral period has expired,
- For shares, it should provide both pre-trade (best bids, best offers) and post-trade data but this should not preclude the introduction of a post-trade CT as a first step. For Fixed Income and equity like ETFs, an EU CT should provide post-trade data only, and
- A post-trade CT should not include transactions which are technical (subject to conditions other than current market price). These are not considered 'addressable' by investors and rarely provide material information. AFME members suggest that MIFID II/R should mandate post-trade data standardisation to help the consolidation of all the information already available to the public.

Noting that mandatory contribution would favour the establishment of a CT, AFME members remain concerned regarding data quality and would therefore recommend the application of an obligation for trading venues and APAs to carry out data verification prior to sharing data with a CTP. Data quality for bonds will need to be improved for the data to provide an accurate picture of the trading market and for the Ct to provide real benefits. For example, AFME Fixed Income members have highlighted discrepancies in the reporting of sub-classes of bonds e.g. instruments within the same sub-asset class have been incorrectly classified and reported as both corporate and covered bonds by different entities. In addition, there have been instances of divergence in the reporting of instruments between asset classes, with the same instruments inconsistently reported as bonds, structured finance products or securitised derivatives.

We also note that access to the required direct data feeds is costly and that it is not economically viable for a CTP to access every trading venue and APA (as mandated under Article 15, RTS 13). AFME recommends that data provided to the CTP by trading venues, SIs and APAs is free of charge, particularly if a revenue sharing model is applied.

Requiring the consolidation of 100% of transactions in equities instruments represents an unattainable goal, making the operation of a CT unattractive from an operator perspective. AFME recommends a combination of reducing the percentage of covered transactions and reducing the scope of covered financial instruments. In our view, this ensures that a CT remains viable and that is not prevented by an insurmountable regulatory burden. We recognise concerns that reducing the percentage of covered transactions could limit the CT to the most liquid venues. To avoid this scenario, one potential solution is that the threshold of transactions to be included should be very high (e.g. over 99%).

For fixed income (FI) markets, MiFID II/R has significantly increased the amount of transparency reporting. However, there are a large number of investment firms reporting off-venue trades via a broad number of APAs. This information is published in different formats by APAs and trading venues and is not always published in a standardised, machine-readable format.

Given a significant volume of business is OTC and traded via SIs, to get a complete picture of the FI market will require connectivity to over 19 APAs and more than 5 MTFs operating in this space. As each APA/venue requires agreements and licensing for each business application when consuming real time information vs publicly available data, it is almost impossible to assess whether 100% coverage is available at present.

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

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

5000 character(s) maximum

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

No, AFME members do not support mandatory consumption.

Numerous investment firms consume market data directly from trading venues or derived data sources for which a CT would not be an adequate substitute, meaning that mandatory consumption of a CT would impose an unnecessary and duplicative cost to affected firms.

We also note that mandating consumption of a CT would remove a critical indicator as to whether a CT is fit for purpose. Instead the focus should be on creating the conditions that foster a cost effective and high-quality CT. Where this exists, demand for the CT will follow naturally.

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

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

5000 character(s) maximum

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

AFME members do not believe that the creation of a CT should necessitate changes in the best execution rules nor that a CT should prohibit flexibility in execution practices where this is justifiable, in particular for wholesale firms where flexibility is necessary to enable investors to pursue a broad range of investment strategies where price may not always the most important factor. AFME members believe that the transparency associated with a successful introduction of a CT would promote better execution practices, particularly for retail investors as it would facilitate enhanced data capabilities for the purposes of monitoring and evidencing.

Members do not believe however that this should necessitate a link to the CT in the best execution rules nor that a CT would in any way restrict flexibility in execution practices in particular for wholesale firms where flexibility is necessary to enable investors to pursue a broad range of investment strategies in respect of which price is not always the most important factor.

We would also advise against considering the CT as a representation of the execution that could have been obtained at any point in time. European markets are varied and geographically spread, which greatly influences the ability for one firm to execute on available quoted prices.

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

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

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

5000 character(s) maximum

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

Under the assumption that a fully commercial CT is unlikely to succeed, AFME believes that the further thought should be given to alternative models and we stand ready to contribute and/or review detailed proposal on how such an organisation could operate.

To deliver on its objectives of greater markets transparency and accessibility, the CT should not only be as representative of markets as possible, it should also be priced reasonably. To achieve this, we believe that contribution to the CT from trading venues, APAs, investment firms and systematic internalisers should be mandatory and mostly free of charge. In particular, we do not believe the CTP should be considered as any other market data user. The current complexity and variation in pricing and policies would make it impossible for the CTP to deliver an end product in any form different from what is currently available, at least for equities markets.

In order to avoid creating an unlevel playing field between the CTP and other market data providers, the data provided would only be free of charge for the CTP in its delivery of the mandatory CT. If the CTP wishes to provide additional services, similar to those already commercialised by market data vendor for instance, the usual market data pricing and policies would apply.

Although we believe that a CT can adequately replace the existing arrangements consumed by many professional individual users, a CT will not be adequate (nor is it cost effective to make it adequate) for the following classes of consumer:

- Wholesale trading professionals (who require full depth of book)
- Electronic trading systems and smart order routers (which require both full depth of book and very low latency to be effective).

For this reason, AFME members believe it vital that the cost of market data is tackled in its own right, and through the measures discussed in our responses to Questions 8 and 9 rather than rely on the CTP as an answer.

AFME members highlight the below to be essential positions that must be recognised when considering the features of a CT for fixed income:

- Mandatory consumption of a CT should not be imposed
- TVs and APAs should not own the intellectual property rights of trade data.
- Appropriate governance framework should be put in place to prevent any monopolisation of data.

3. The scope of the consolidated tape

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Shares pre-trade[3]				X		
Shares post-trade					X	
ETFs pre-trade	X					
ETFs post-trade					X	
Corporate bonds pre-trade	X					
Corporate bonds post-trade					X	
Government bonds pre-trade	X					
Government bonds post-trade					X	
Interest rate swaps pre-trade						
Interest rate swaps post-trade						
Credit default swaps pre-trade						
Credit default swaps post-trade						
Other						

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

Question 15.1 Please explain your answers to question 15:

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

We note there is a need for a CT in both Fixed Income (FI) and Equities. The requirement to include pre- and post-trade data differs between asset classes. Within FI the CT should focus on capturing post-trade data only. For equities, the CT should provide both pre-trade (best bids, best offers) and post-trade data but this should not preclude the introduction of a post-trade CT as a first step. The arrangements for subsequently providing pre-trade information should be fully considered in the initial approach.

We do not believe that that ETF pre-trade data should be included within the scope of the CT as only a small amount of volume is traded on-exchange with the majority being executed on Request for Quote execution venues.

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

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

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

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

We believe it is more important to make sure that post-trade data clearly represents the differences between types of transactions (addressable, price-forming vs. technical in nature). It is paramount not only to actual price formation but also essential in running functions such as algorithm calibration, risk management and trade surveillance. AFME asserts that flags on transactions reported to the CT and consequently to APAs by trading venues should be granular enough to allow market participants to distinguish addressable versus non-addressable liquidity. We think this would lead to overall improved data quality and accordingly more refined transparency calculations. AFME members believe that non-price-forming activity (e.g. give-up/give-in trades) should not be included in transparency calculations (e.g. liquid market, SMS).

AFME notes that market stakeholders have been addressing these issues in industry working groups such as FIX Protocol.

Another valuable feature of a CT would be the addition of a flag to identify trades executed under different types of waiver. This would assist market participants and regulators to understand the number and volume of trades executed different waiver types.

Additionally, AFME would be supportive of applying a solution to clarify rules regarding which counterparty reports a given trade. Doing so will serve to reduce the number of duplicative trades which has been an ongoing issue under the current MiFID II/R transparency regime.

Finally, it is important that the CT respects the MiFID II/R deferred publication regime, such that trades which benefit from deferred publication are not published on the CT until after the deferral period has expired. We do not believe that the post-trade deferral regime should be adjusted to enhance data to be reported on the CT. The deferral regime has various use cases including ensuring that market participants do not suffer from adverse price movements when executing trades in size. Policymakers should not modify the regime for the purposes of creating a CT.

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

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

Shares

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

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

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

Other	◯	◯	◯	◯	◯	◯

Question 17.1 Please explain your answers to question 17:

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

The Official List of shares for the CT should be comprised of EU shares with an exchange listing in the EEA rather than for all shares made available for trading on EU venues. Implementation should be straight forward as primary issuance is a tightly regulated and organised process in Europe and data on shares falling within this category should be readily available. Regulated markets have knowledge of their issuers and extensively manage static data for the purpose of listing, trading and corporate actions.

AFME members support the notion that the Official List of shares could also be used to determine the scope of the share trading obligation (STO). However, this should not prevent the inclusion of UK and Swiss data within the scope of the CT.

AFME's primary view on the STO is that it should be removed and certainly not extended in any way. It does not result in positive outcomes for end-users and increases complexity in market structure. We echo concerns stated by the German Ministry of Finance in their MIFID II/R review position paper. Further, the STO can impact the confidence that (particularly international) clients have in the ability of EU firms to provide best execution on their behalf, and consequently the international competitiveness of these firms. This undesirable outcome is not consistent with the stated objectives of the CMU.

Should the STO continue to exist, we strongly agree that the scope of the STO should be adjusted to ensure that third country shares are excluded from its scope. It should be noted that for even this EU-only STO, there will exist a fundamental contradiction with best execution requirements. This tension will continue to result in sub-optimal outcomes for end investors.

Mitigating some of its potential unforeseen negative consequences has taken significant effort from EC officials, regulators and practitioners across the industry, for little benefit. The legislation has not cast the EU in a favourable light as a place in which to invest or raise capital.

AFME members' preference would be to remove the STO as trading in European shares was already taking place in Europe before the introduction of the rule and we believe it will continue to do so without it. If removal of the STO is not considered appropriate, AFME proposes a number of amendments to make it more functional and ensure its scope of application is limited to truly European shares rather than any shares which may be capable of being traded in Europe (i.e. any shares traded on a trading venue).

In order to achieve this, an option would be to limit the STO to shares with an exchange listing in the EEA, rather than to all shares that are available for trading on EU venues. The rule should also recognise that where European-listed issuers have chosen to raise capital and list on a third country regulated market, as such trading in that listing should remain accessible to EU investment firms and EU investors. When referring to third country listings we mean shares in respect of an exchange listing has been pursued at the initiative of the issuer both on a regulated market in the EU and a third country equivalent. Such listings perform a valuable and legitimate role for companies' capital raising (both for EU firms raising capital abroad and non-EU firms raising capital in the EU).

Third Country Listing Exemption
An exemption for third country listings is necessary to avoid detrimental impacts for investors. Clients may

be required to trade this line of the share (e.g. because their client mandate may include the currency of permitted investments), or they may need to otherwise access the closing price on that third country market (for example, where the non-EU line of the share is the one represented on an index they are tracking or are benchmarked to).

Where equivalence decisions have not yet been taken, permitting trading outside the EU in a share where there is a third country listing would also make it easier for EU companies to access additional pools of capital abroad as well as to encourage foreign issuers to list on European regulated markets. Finally, it would ensure that EU investment firms are not at a competitive disadvantage to non-EU firms when accessing liquidity. We do not share concerns cited by ESMA that issuers would seek third country listings so as to become exempt from the STO. Seeking an additional listing is associated with stringent initial admission obligations, as well as ongoing disclosure obligations in the third country (and potentially other obligations under listing rules regarding governance etc). As a matter that would require substantial management time, expense and ongoing operational support (including complying with two different sets of rules), this means it would not be undertaken unless it is required by an issuer's capital raising strategy.

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

Please explain your answer:

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

AFME does not support the inclusion of a liquidity filter for shares. We are concerned that the exclusion of illiquid instruments from the CT may further contribute to a lack of liquidity. Furthermore, market participants would suffer from a lack of historical data for instruments which were illiquid but have become liquid or vice versa.

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

Please explain your answer:

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

A major issue with allowing for shares admitted but not listed on EU regulated markets (RMs), or not only admitted on EU TVs, is the inclusion of a long list of third country shares, such as Apple or Mitsubishi, that would only serve to pollute the EU tape and to duplicate trade reports already made in other transparent jurisdictions.

The Official List of shares for the CT should be comprised of EU shares with an exchange listing in the EEA, rather than for all shares made available for trading on EU venues. Implementation should be straight forward as primary issuance is a very tightly regulated and organised process in Europe. All regulated markets have knowledge of their issuers and manage extensively static data for the purpose of listing, trading and corporate actions. This rule rightly recognises the perimeter of the region in which issuers have chosen to raise capital in order to be transparent and accessible to EU investment firms and EU investors.

When determining the scope of the CT, however, policymakers should ensure that relevant provisions do not prevent the potential inclusion of data relating to shares traded on Swiss or UK trading venues or other jurisdictions where an express need has been identified by market practitioners. The addition of this data would be a significant benefit to EU investors and would likely increase commercial viability.

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

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

AFME members believe that the scope of the CT could be aligned with the post-trade reporting scope for cash bonds within fixed income, excluding non-price-forming trades. Members highlight that it would make the regime more complex and susceptible to confusion if MiFID II/R introduced two different scopes.

A CT for equities and fixed income should be developed in parallel. Careful consideration should be given to the timelines for implementing a CT which is likely to differ between asset classes, with the fixed income CT taking longer to enact.

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

4.1. Equity trading and price formation

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

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

Please explain your answer:

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

AFME members believe the share trading obligation (STO) should be removed from MiFID II/R. It does not result in positive outcomes for end-users and increases complexity in market structure. Trading in European listed shares was already taking place in Europe before the introduction of the rule and we believe it will continue to do so without it. We note that for even an EU-only STO, there will exist a fundamental contradiction with best execution requirements. This tension will continue to result in sub-optimal outcomes for end investors.

The current MiFIR STO has created unintended outcomes with negative consequences for investment firms and European investors. We believe its current form goes beyond its intended purpose which we understand was to ensure trading in European listed shares occurs within the European jurisdiction or under an equivalent regulatory regime. We do not believe the intention was to prevent EU investment firms from trading shares such as Facebook or Mitsubishi on their home markets. Neither do we think the desired outcome was to put EU Investment Firms at a disadvantage by restricting access to the venues to which non-EU firms would have access.

Mitigating some of its potential unforeseen negative consequences has taken significant effort from EC officials, regulators and practitioners across the industry, for little benefit. The legislation has not cast the EU in a favourable light as a place in which to invest or raise capital. We believe this because MiFID II/R already ensures that multilateral trading cannot take place outside of a regulated market or a multilateral trading facilities. In addition, the systematic internaliser regime and its qualifying thresholds ensure adequate supervision of firms that affect price-forming transactions outside of trading venues. Further, EU brokers trading EU shares will be driven by MiFID II/R best execution obligations to access the largest pools of liquidity. For European listed shares, this will typically be on European venues. Additionally, the needs of firms to benchmark prices to the primary market for a given share drives trading to European venues including the primary listing venue. Finally, the overall transparency regime for equities ensures visibility of both pre and post-trade information.

Moreover, in light of ESMA’s recent proposal to remove SIs from the scope of the STO, AFME does not believe enforcing increased lit market trading through a STO would necessarily improve price formation and conversely may impact the ability for firms to provide best execution for their underlying clients. AFME members are doubtful there has been a significant change in the proportion of trading executed on venues and believe the current level of on venues trading versus OTC is rather due to a wider scope of application of post-trade transparency requirements as well as implementation issues than to a change in trading practices or a proof MiFID II/R has failed to deliver its objectives. AFME members certainly do not believe that there has been a decline in the quality of the price formation process post-MiFID II/R.

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

- (x) 1 - Not at all
- ( )

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

Question 22.1 Please explain your answer to question 22:

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

The current STO has created unintended outcomes with negative consequences for investment firms and investors in European equities. We believe its current form goes beyond its intended purpose, which, we understand was to ensure trading in European shares occurs within the European jurisdiction or under an equivalent regulatory regime. We do not believe the intention was to prevent EU investment firms from trading shares such as Facebook or Mitsubishi on their home markets. Neither do we think the desired outcome was to put EU Investment Firms at a disadvantage by restricting access to the venues to which non-EU firms would have access.

Mitigating some of its potential unforeseen negative consequences has taken significant effort from EC officials, regulators and practitioners across the industry, for little benefit. The legislation has not cast the EU in a favourable light as a place in which to invest or raise capital. We believe this is because MiFID II/R already ensures that multilateral trading cannot take place outside of a regulated market or a multilateral trading facilities. In addition, the SI regime and its qualifying thresholds ensure adequate supervision of firms that effect price-forming transactions outside of trading venues. Further, EU brokers trading EU shares will be driven by MiFID II/R best execution obligations to access the largest pools of liquidity. For European shares this will typically be on European venues. Additionally, the needs of firms to benchmark prices to the primary market for a given share drives trading to European venues including the primary listing venue. Finally, the overall transparency regime for eEquities ensures visibility of both pre and post-trade information.

With the current regulatory framework, it is therefore unlikely that removing the STO would materially change the manner in which firms undertake transactions in shares in Europe.

AFME members’ preference would be to remove the STO: trading in European shares was already taking place in Europe before the introduction of the rule and we believe it will continue to so without it. If removal of the STO is not considered appropriate, AFME proposes a number of amendments to make it more functional and ensure its scope of application is limited to truly European shares rather than any shares which may be capable of being traded in Europe (i.e. any shares traded on a trading venue).

In order to achieve this, an option would be to limit the STO to shares with an exchange primary listing, at the request of the issuer in the EEA, rather than to all shares that are available for trading on EU venues. The rule should also recognise that where European-listed issuers have also chosen to raise capital and list on a third country regulated market, trading in that listing should remain accessible to EU investment firms and EU investors. When referring to third country listings we mean shares in respect of an exchange listing has been pursued at the initiative of the issuer both on a regulated market in the EU and a third country equivalent. Such listings perform a valuable and legitimate role for companies’ capital raising (both for EU firms raising capital abroad and non-EU firms raising capital in the EU).

Third Country Listing Exemption

An exemption for third country listings is necessary to avoid detrimental impacts for investors. Clients may be required to trade this line of the share (e.g. because their client mandate may include the currency of permitted investments), or they may need to otherwise access the closing price on that third country market (for example, where the non-EU line of the share is the one represented on an index they are tracking or are benchmarked to).

Where equivalence decisions have not yet been taken, permitting trading outside the EU in a share where there is a third country listing would also make it easier for EU companies to access additional pools of capital abroad as well as to encourage foreign issuers to list on European regulated markets. Finally, it would ensure that EU investment firms are not at a competitive disadvantage to non-EU firms when accessing liquidity. We do not share concerns cited by ESMA that issuers would seek third country listings so as to become exempt from the STO. Seeking an additional listing is associated with stringent initial admission obligations, as well as ongoing disclosure obligations in the third country (and potentially other obligations under listing rules regarding governance etc). As a matter that would require substantial management time, expense and ongoing operational support (including complying with two different sets of rules), this means it would not be undertaken unless it is required by an issuer’s capital raising strategy.

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

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

Question 23.1 Please explain your answers to question 23:

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

AFME members believe the STO should be removed from MiFID II/R. It does not result in positive outcomes for end-users and increases complexity in market structure. Trading in European shares was already taking place in Europe before the introduction of the rule and we believe it will continue to do so without it. For this reason we disagree with maintaining the STO.

Should the STO be maintained with adjustments, we believe that the scope of the STO should be adjusted and ensure that third country shares are excluded from its scope. It should be noted that for even this EU-only STO, there will exist a fundamental contradiction with best execution requirements. This tension will continue to result in sub-optimal outcomes for end investors.

The current STO has created unintended outcomes with negative consequences for investment firms and investors in European equities. We believe its current form goes beyond its intended purpose which we understand was to ensure trading in European shares occurs within the European jurisdiction or under an equivalent regulatory regime. We do not believe the intention was to prevent EU investment firms from trading shares such as Facebook or Mitsubishi on their home markets. Neither do we think the desired outcome was to put EU investment firms at a disadvantage by restricting access to the venues to which non-EU firms would have access.

AFME proposes a number of amendments to make the STO more functional and ensure its scope of application is limited to truly European shares rather than any shares which may be capable of being traded in Europe (i.e. any shares traded on a trading venue).

In order to achieve this, an option would be to limit the STO to shares with an exchange listing, at the request of the issuer, in the EEA, rather than to all shares that are available for trading on EU venues. The rule should also recognise that where European-listed issuers have also chosen to raise capital and list on a third country regulated market, trading in that listing should remain accessible to EU investment firms and EU investors. When referring to third country listings we mean shares in respect of an exchange listing has been pursued at the initiative of the issuer both on a regulated market in the EU and a third country equivalent. Such listings perform a valuable and legitimate role for companies' capital raising (both for EU firms raising capital abroad and non-EU firms raising capital in the EU).

Third Country Listing Exemption
An exemption for third country listings is necessary to avoid detrimental impacts for investors. Clients may be required to trade this line of the share (e.g. because their client mandate may include the currency of permitted investments), or they may need to otherwise access the closing price on that third country market (for example, where the non-EU line of the share is the one represented on an index they are tracking or are benchmarked to).

Where equivalence decisions have not yet been taken, permitting trading outside the EU in a share where there is a third country listing would also make it easier for EU companies to access additional pools of capital abroad as well as to encourage foreign issuers to list on European regulated markets. Finally, it would ensure that EU investment firms are not at a competitive disadvantage to non-EU firms when accessing liquidity. We do not share concerns cited by ESMA that issuers would seek third country listings so as to become exempt from the STO. Seeking an additional listing is associated with stringent initial admission obligations, as well as ongoing disclosure obligations in the third country (and potentially other obligations under listing rules regarding governance etc). As a matter that would require substantial management time, expense and ongoing operational support (including complying with two different sets of rules), this means it would not be undertaken unless it is required by an issuer's capital raising strategy.

In summary, we do not think that the STO serves a meaningful purpose in the EU market structure and have set out our reasoning as to why it is unnecessary above and in our responses to Questions 17, 21 and 22.1. If it is retained, we believe that casting the STO's scope as applying to shares that are admitted to trading on a regulated market in the EU, coupled with an exemption for third country listings, is the best and most straight forward way to mitigate the issues that have arisen since its introduction.

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

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

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

Question 24.1 Please explain your answers to question 24:

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

AFME strongly opposes any removal of SIs as a legitimate execution venue for shares as part of the STO. SIs cover a range of activities which are complementary to liquidity available on Regulated Markets and MTFs as well as providing unique benefit to their clients.
AFME members look to offer clients a range of liquidity solutions to help in their investment process. These include the execution of orders on execution venues and the ability for clients to gain the benefit of AFME members' higher risk tolerance or balance sheet. An example of this is where an asset manager is looking to execute in large size with urgency. This liquidity may not be immediately available on trading venues. AFME members take the risk from these clients, providing certainty of execution to them and managing the subsequent market risk themselves.
In managing market risk, AFME members can use trading venues and the liquidity offered there over time. They bridge the liquidity between the asset manager wishing to trade in large size and immediately, with the supply available in the market. As such, SIs play an important role in bringing liquidity to the market.
AFME strongly believes that there is considerable value offered by these structures to end investors. Bank SIs provide unique liquidity that is distinct from that offered by other providers, such as exchange venues or Electronic Liquidity Providers SIs (ELP SIs). AFME believes that all of these sources of liquidity are important and that a diverse range of execution mechanisms should be offered to end investors to aid their performance and to encourage more investment from the firms outside of Europe, where alternative execution mechanisms co-exist successfully with the stock exchanges (e.g. in the US, Canada or Switzerland).
Depending on the size of an order, the liquidity of the stock and the trading objectives of an investment firm, dealing on behalf of corporate and/or retail clients, our members' expertise is critical to know how to execute the order to maximise performance and minimise price impact. Sometimes an exchange is the best option and at others, a bank SI may offer the best execution outcome. A variety of execution services within banks operate under the SI regime: high touch trading and program trading for instance are activities where clients would often require the bank to transact in size, sometimes based on a commonly agreed benchmark such as volume-weighted average price (VWAP). As an SI, the bank will trade on risk and act as a facilitator for

its client, unwinding the positions taken on its books over a period of time, most of the time on the regulated market. The service rendered to the client is twofold: they benefit from the bank's capacity to trade on risk, thus almost "lending" its capital, and they also benefit from the smooth execution of a trade that they would have otherwise found difficult on an order driven market.
In their current form, European equities markets offer a diverse range of execution mechanisms to the benefit of end investors. Post-MiFID II/R, there is now more focus on meeting best execution requirements than has been seen before, and AFME members think that a diversity of execution options, as well as competition between execution venues, results in beneficial outcomes for investors.
The dynamics of bank SIs:

- Bank SIs are distinct from broker crossing networks ("BCNs") as they only facilitate business that is deemed principal in nature (i.e. where a bank is offering its capital to a client to facilitate a trade). BCNs on the other hand, allowed bank clients to interact with other counterparties directly, without full transparency to the counterparty

- SIs do not provide the same service as an exchange. Bank SIs are putting up their principal capital to trade against clients, often in sizes considerably larger than that available on exchange lit books. Investors therefore have the option to trade against bank SIs when they deem it preferable according to the size and nature of their order. Removing this option would unduly restrict investors' choice in modes of execution and ultimately execution outcomes

- Europe is operating in a liquidity constrained environment due to several factors including the macro environment, Brexit and the growth of closing auctions amongst other things. As getting a trade executed throughout the day has become harder, the provision of capital via bank SIs has become an important feature for investors

Throughout the MiFID II/R legislative process, there was a recognition that the continued provision of principal capital is important across asset classes. Banks and brokers have for years traded on principal with their clients and sought to continue to offer this important service by supporting the new SI structures created by the legislator. AFME sees no evidence of a material increase in the amount of volume traded principally by banks over the last several years.

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

Please explain your answer:

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

AFME members believe that further work should be done in relation to OTC data quality: greater consistency is required in order to determine which trades should be reported as through or not trough an SI. The reporting of certain technical trades (e.g. give-ups and give-ins, intra-group transactions for risk management purposes) is likely to inflate the volume of SI and OTC trading activity. AFME stands ready to work with ESMA, regulators and other market stakeholders (for example with the FIX Protocol Consolidated Tape Working Group) in order to address this issue.

AFME members are concerned about the recent ESMA proposals on this, particularly around changes to the SMS regime: we strongly oppose changing the definition of SMS (as proposed in the ESMA's CP on the equities transparency regime) and in particular to index it to the average daily turnover instead of the average traded size. Average daily volumes are vastly influenced by market conditions, both cyclical and seasonal and cannot form the basis on which firms trading on risk would be requested to quote at firm prices.

We would similarly raise concerns if firms' quoting obligation were extended to illiquid instruments (as proposed in ESMA's CP on the equities transparency regime), as the change in risk profile of quoting at SMS would be even more prevalent.

There are several complexities linked to trading illiquid names: from determining the appropriate price for a stock that potentially rarely trades (thus not having a reliable continuous reference price) to ensuring that a firm can source sufficient stock to meet demand, particularly in light of developments around initiatives such as CSDR. Extending the quoting requirement to illiquid stocks may push SIs to stop any facilitation activity in those names if the risk profiles are not sustainable, which would impact available liquidity in those stocks without necessarily bringing more flow on venue.

AFME believes it is important that the Commission recognises the fundamental difference between the SI framework and that of trading venues. An exchange does not facilitate trades using its balance sheet and instead brings together buyers and sellers by providing a matching mechanism. SIs however are offering access to their balance sheets which requires a different framework to ensure that this liquidity can continue to be offered to the European investor community within a structure that appropriately allows a firm to manage their risk. Furthermore, trading venues operating central limit order books do not tend to match in sizes above SMS. SIs, on the other hand, have the ability to transact business in sizes above SMS whilst managing price impact, albeit in business that may be below LIS but still relatively large in size and in sizes not available on lit venues.

In the context of the MiFIR pre-trade transparency rules for non-equites SIs (Article 18), AFME members note that Article 18 does not only impose a transparency/reporting obligation on SIs but also requires SIs to make the firm quotes 'available to other clients' (Article 18(5)) and 'enter into transactions' under the published conditions with clients to whom the quote(s) are made available (Article 18(6) & 18(7)). MiFIR pre-trade rules should only focus on the reporting obligation rather than imposing additional obligations which are complex and difficult to apply and could have unintended consequences. These risks have been mitigated under the current regime by the possibility for SIs to draft their own commercial policies. However, we do question the added value of these obligations and agree with ESMA's assessment and support the proposal to delete Article 18 (6), Article 18 (7). Additionally, AFME members acknowledge (as stated in ESMA's report) a lack of anonymity for individual SI quotes. Therefore, AFME members suggest ESMA also consider omitting Article 18 (5) of MiFIR which states that 'Systematic Internalisers shall make the firm quotes published […]available to their other clients' as this article also links to the obligation to enter into transactions. Removing this article would reinforce that SIs would only be required to trade on the published quote with the requesting client and that SIs would have discretion to trade with other clients on a case by case basis.

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

Please explain your answer:

5000 character(s) maximum

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

AFME members will always support regulatory intervention where the regulatory framework does not deliver on core MiFID objectives.

However, it is important that the Commission recognises the fundamental difference between the SI framework and that of trading venues and as such the concept of a level playing field between all kinds of execution venues may have limited utility. An exchange does not facilitate trades using its balance sheet and instead brings buyers and sellers together by providing a matching mechanism. SIs play a very distinct role in financial markets and are not substitutes or alternatives to multilateral trading venues. They offer access to their balance sheets and transfer risk, which requires a different framework to ensure that this liquidity can continue to be offered to the European investor community within a structure that allows a firm to manage its risk appropriately and consistently with the prudential requirements to which it is subject. Calibration is therefore an essential part of the MiFID II/R framework as it ensures the delicate balance between market transparency and market liquidity.

Bank SIs provide investors with a trading service similar to the one corporate banks provides to business: the bank uses its capital and balance sheet to facilitate cheaper, more efficient and better priced investment transactions to the buy-side, which in turn benefits end investors, such as pensioners and savers, who entrust their money to asset and portfolio managers to obtain the best possible results for them.

AFME members value the role of different kinds of execution venues and services, including multilateral venues, and there is no desire to see non-exchange flow to represent the majority of execution within equities markets. However, we urge the Commission to recognise the benefits to end investors brought about through the existence of a variety of execution choices, including SIs, dark MTFs, and FBAs which provide a valuable and additive source of liquidity.

By way of illustration, trading venues operating central limit order books (CLOBs) do not tend to match in sizes above SMS. For example, trading on a continuous lit order book in sizes at or below SMS would provide a beneficial service to high net worth investors who typically deal in those sizes. However, for institutional investors, placing orders on a CLOB is not possible as doing so would provide an indication of buying interest to other market participants (including firms who utilise trading strategies benefitting from latency arbitrage), leading to prices moving against them. It is therefore important that institutional investors are able to access execution venues that allow for trading in size without a detrimental impact.

In comparison, SIs have the ability to transact business whilst managing price impact in sizes between SMS and LIS but still relatively large and in sizes not available on lit venues.

We note that policymakers have addressed the fact that SIs were previously able to quote at a partial tick for trades in all sizes, whereas trading venues were constrained by the tick size regime. Unfortunately, when this issue was resolved interlocutors chose to remove the possibility of trading at mid-point for both trading venues and SIs, which is a negative outcome. AFME members strongly believe that execution at mid-point should be permissible regardless of size.

In conclusion, we strongly believe the concept of levelling the playing field across all types of execution venues fails to recognise the differences in trading mechanisms, and the roles they play in providing access to liquidity.

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

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

Please explain your answer:

5000 character(s) maximum

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

AFME members believe matters warranting investigation include reconsideration of market microstructure measures under MiFID II/R such as relaxing restrictions on commercial incentives for liquidity providers and market maker obligations under RTS 8. Such relaxation may allow operators of lit markets to pursue commercial means of encouraging liquidity providers to be more present thus enhancing lit market volumes and market quality.

AFME members value the price formation and price discovery provided by lit venues and do not wish to see that undermined. However, there is no evidence to demonstrate that these qualities are impacted by aspects such as the levels of dark trading corresponding to the limits currently set under the DVC. In this regard, we refer to the FCA Occasional Paper, “Aggregate Market Quality Implications of Dark Trading” which asserts that “since the trades executed in the dark are based on reference prices determined on the lit exchanges, the overall market’s price discovery process is more efficient for each stock traded simultaneously in the dark and lit venues”. The FCA concludes that trading quality is “furthered by the existence of dark pools operating alongside lit exchanges. It is important that policy makers take care not to eliminate the market quality benefits of dark trading by arbitrarily imposing uniform dark trading restrictions for all stock sizes”.

AFME does not believe enforcing increased lit market trading would necessarily improve price formation and conversely may impact the ability for firms to provide best execution for their underlying clients. Therefore, AFME supports the removal of both, the STO and the DVC mechanism. Neither of these policies advance positive outcomes for end-users, but further increase complexity in market structure.

MiFID II/R's best execution obligation requires firms to take sufficient steps to obtain the best possible result for a client when executing a client order. The factors an investment firm will consider in applying its best execution obligations will be driven by a client’s objectives and strategy, which can differ significantly. The execution strategies, differing venues and liquidity providers used by investment firms today to facilitate best execution for clients reflects the wide range of needs and objectives of market participants in European markets. Reducing competition in European markets by restricting liquidity and requiring increased trading on lit markets significantly limits the optionality and flexibility investment firms have to facilitate the needs of clients, which will have a detrimental impact on execution quality, ultimately impacting end investors whose pensions and savings are dependent on investment managers’ ability to execute transactions in a way that minimises overall impact and costs to the value of their portfolios.

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

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

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

- 1 - Disagree
-

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

Question 28.1 Please explain your answer to question 28:

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

AFME members support the notion that the Official List of shares could also be used to determine the scope of the STO. We note that this this should not prevent this inclusion of UK and Swiss data within the scope of the CT.

AFME’s primary view on the STO is that it should be removed, as it does not result in positive outcomes for end-users and increases complexity in market structure. We echo concerns recently stated by the German Ministry of Finance in their MIFID II/R review position paper. Further, the STO can impact the confidence that (particularly international) clients have in the ability of EU firms to provide best execution on their behalf, and consequently the international competitiveness of these firms. This undesirable outcome is not consistent with the stated objectives of the CMU.

Should the STO continue to exist, we strongly agree that the scope of the STO should be adjusted to ensure that third country shares are excluded from its scope. It should be noted that, even for this EU-only STO, there will exist a fundamental contradiction with best execution requirements. This tension will continue to result in sub-optimal outcomes for end investors.

Mitigating some of its potential unforeseen negative consequences has taken significant effort from EC officials, regulators and practitioners across the industry, for little benefit. The legislation has not cast the EU in a favourable light as a place in which to invest or raise capital.

AFME members’ preference would be to remove the STO. Trading in European shares was already taking place in Europe before the introduction of the rule and we believe it will continue to do so without it. If removal of the STO is not considered appropriate, AFME proposes a number of amendments to make it more functional and ensure its scope of application is limited to truly European shares rather than any shares which may be capable of being traded in Europe (i.e. any shares traded on a trading venue).

In order to achieve this, an option would be to limit the STO to shares with an exchange listing in the EEA, rather than to all shares that are available for trading on EU venues. The rule should also recognise that where European-listed issuers have chosen to raise capital and list on a third country regulated market, as such trading in that listing should remain accessible to EU investment firms and EU investors. When referring to third country listings, we mean shares in respect of an exchange listing has been pursued at the initiative of the issuer both on a regulated market in the EU and a third country equivalent. Such listings perform a valuable and legitimate role for companies’ capital raising (both for EU firms raising capital abroad and non-EU firms raising capital in the EU).

Third Country Listing Exemption
An exemption for third country listings is necessary to avoid detrimental impacts for investors. Clients may be required to trade this line of the share (e.g. because their client mandate may include the currency of permitted investments), or they may need to otherwise access the closing price on that third country market

(for example, where the non-EU line of the share is the one represented on an index they are tracking or are benchmarked to).

Where equivalence decisions have not yet been taken, permitting trading outside the EU in a share where there is a third country listing would also make it easier for EU companies to access additional pools of capital abroad as well as to encourage foreign issuers to list on European regulated markets. Finally, it would ensure that EU investment firms are not at a competitive disadvantage to non-EU firms when accessing liquidity. We do not share concerns cited by ESMA that issuers would seek third country listings so as to become exempt from the STO. Seeking an additional listing is associated with stringent initial admission obligations, as well as ongoing disclosure obligations in the third country (and potentially other obligations under listing rules regarding governance etc). As a matter that would require substantial management time, expense and ongoing operational support (including complying with two different sets of rules), this means it would not be undertaken unless it is required by an issuer's capital raising strategy.

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

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

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

Question 29.1 Please explain your answer to question 29:

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

AFME members believe that the scope of the CT should be no broader than the existing transparency regimes for specific asset classes, both as regards the scope of instruments covered and the scope of information to be collected. We address this in further detail below, however we note that further consultation is required.

We also note that a post-trade CT should not include transactions which are technical (subject to conditions other than current market price). These are not considered 'addressable' by investors and rarely provide material information to them.

We believe it is important to make sure that post-trade data clearly represents the differences between types of transactions (addressable, price-forming vs. technical in nature) and our view is that non-price-forming trades be excluded from the CT: this is not only paramount for actual price formation but also essential for functions such as algorithm calibration, risk management and trade surveillance. AFME considers that flags on transactions reported to the CT should be granular enough to allow market participants to distinguish addressable versus non-addressable liquidity, because this would lead to overall improved data quality and, consequently more refined transparency calculations. AFME members believe that non-price-forming activity (e.g. give-up/give-in trades) should not be included in transparency calculations (e.g. liquid market, SMS).

AFME notes that market stakeholders have been addressing these issues in industry working groups such as FIX Protocol.

4.3. Post-trade transparency regime for non-equities

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Abolition of post-trade transparency deferrals	●	○	○	○	○	○
Shortening of the 2-day deferral period for the price information	●	○	○	○	○	○
Shortening of the 4-week deferral period for the volume information	●	○	○	○	○	○
Harmonisation of national deferral regimes	○	○	○	○	●	○
Keeping the current regime	○	○	○	○	○	○
Other	○	○	○	○	○	○

Question 30.1 Please explain your answer to question 30:

5000 character(s) maximum

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

A CT for equities and fixed income could be developed in parallel. Careful consideration should be given to the timelines for implementing a CT; these are likely to differ between asset classes, with the fixed income

CT taking longer to enact.

Furthermore, AFME members recommend that, when administering a CT to FI products, a phased approach within the class of cash bonds be applied.

The availability of data that is sufficient in value and quality is based on the volume of transactions and the fraction of transactions that are subject to transparency requirements. We stress that shortening deferrals may appear as an immediate way to make transparency more expeditious and increase the availability of data; however, this fails to take into account the fact that altering the transparency rules would modify the balance between liquidity and transparency. Deferrals should be harmonized to the most appropriately calibrated regimes in Europe, currently demonstrated by 10 NCAs including Germany, Italy, France. As already well documented, the impact of prudential and market regulations on dealers has already led to a significant reduction in dealers' ability and willingness to trade at risk. It is inappropriate to increase constraints, especially at times when liquidity in numerous types of assets is fragile. Additionally, harmonizing the deferral regime will also improve data quality within fixed income markets as it will provide for consistency in what data is reported throughout the EU.

AFME members note that any comparison between a European CTP and TRACE needs to be fully assessed. TRACE was a progressive build focusing over one sub-asset class, increasing calibration over several years and has a cap allowing volume omission deferrals, currently for 6 months.

Only once the industry is certain that correct and meaningful information is being reported can a CT be developed. Only then should a move to the next stage of the transparency regime be permitted and any considerations be made to altering the deferral regime, as the CT would provide visibility over the consolidated numbers.

We strongly believe that data consolidation should not be driving the policy decisions on MiFID II/R transparency, doing so could lead to serious unintended consequences.

AFME members believe that addressing data quality issues and consolidating the data that is already made public but in a non-consistent format by the APAs, will significantly increase the transparency in the market, without needing to embark on complex MIFID II/R transparency recalibrations.

MiFID II/R introduced deferrals because it recognizes that real time transparency can expose liquidity providers to undue risks, in particular when trading in illiquid instruments or transactions above a certain size. For example, market participants would potentially be able to monitor the unwinding of other firms positions which could cause harm to the market.

AFME fully supports the objective of MIFID II/R to increase market transparency within fixed income. However, transparency needs to be carefully calibrated and well timed in order to allow the market to continue to function efficiently. Too much transparency too quickly on instruments which are illiquid or large in scale, would expose liquidity providers to undue risks resulting in a reduction of the capital deployed to facilitate those transactions. Liquidity providers who execute these transactions take the risk on their own balance sheet and need time to exit these positions, especially for less liquid instruments and large transactions. If there are no post-trade deferrals, market participants will automatically know what position liquidity providers hold and could use that information to trade against them. This could lead to increased spreads and therefore costs for the client, or liquidity providers could decide not to trade, which would lead to reduced liquidity in the market. Parties operating in regimes with limited deferral mechanisms may be disadvantaged in their ability to find liquidity. In addition, some sovereign Debt Management Officers (DMOs) have raised concerns over the publication of the issuance of sovereign bond trades after four weeks.

For the above reasons, it is crucial for (1) the deferral regime to remain well balanced and, that MiFIR retains the 4-week volume omission and maintains the two-day deferral period for price information as implemented by the National Competent Authorities of France, Germany and Italy to protect market liquidity and (2) that the the indefinite deferral regime for sovereign bonds where individual volumes are not published be continued.

II. Investor protection[4]

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

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

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

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

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

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

More investor protection corresponds with the needs and problems in EU financial markets.	X					
The investor protection rules in MiFID II/MiFIR have provided EU added value.	X					

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 31.1:

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

AFME is not responding to this question.

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

	Yes	No	N.A.
Product and governance requirements	X		
Costs and charges requirements			X
Conduct requirements			X
Other			X

1. Easier access to simple and transparent products

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

Question 32.1 Please explain your answer to question 32:

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

AFME members fully support the Capital Markets Union Action Plan to improve access by retail investors to capital markets and asks that the Commission considers the feedback put forward in the response to Question 47.1 (summarised below) when examining measures to ensure that simple investment products are more easily accessible to retail clients. In summary:

- the product governance regime should apply only to complex products (therefore not applying it to non-complex products such as ordinary shares and bonds, but noting that UCITS should remain in scope), and

- the product governance regime should be restricted to non-wholesale markets (i.e. so that the regime does not apply to business with eligible counterparties and per se professional clients).

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

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

Question 33.1 Please explain your answer to question 33:

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

AFME is not responding to this question because the focus of our members’ activities is predominately on wholesale markets.

2. Relevance and accessibility of adequate information

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

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

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

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

All client categories should be able to opt out if specific conditions are met.	○	●	○
Other	○	○	●

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

5000 character(s) maximum

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

AFME is strongly in favour of transparency and supports full disclosure of all relevant information between our members and their clients. AFME supports reducing complexity and maintaining the current high levels of transparency through the continued provision of the most appropriate commercial information. This position is best supported by disapplication of the MiFID II/R ex-ante and ex-post costs and charges disclosures for professional and eligible counterparties, rather than by allowing such clients to opt out of the regime for the reasons articulated below.

The ex-ante costs and charges disclosure requirements under MiFID II/R are not beneficial to wholesale clients (professional clients and eligible counterparties). These disclosures are extraneous to the needs of wholesale clients whilst introducing an unnecessary overhead on producers of the disclosures, both in terms of interpreting the rules and operationalising them.

Wholesale clients had not, prior to the introduction of the MiFID II/R costs and charges regime, reported a market failure with respect to cost disclosures and had not expressed any requirement for a more codified approach to disclosures with respect to their individual commercial relationships with members.

AFME members are driven by commercial imperatives to deliver the highest standard of commercial disclosures to their clients (irrespective of the MiFID II/R requirements). None of this useful information, designed on the basis of clients' explicit requirements, would be impacted by the disapplication of the MiFID II/R ex-ante and ex-post costs and charges requirements in relation to wholesale clients. Accordingly, the usefulness of the additional data required under the MiFID II/R ex-ante costs and charges disclosures is not apparent to wholesale counterparties who, with the exception of information provided to distributors of structured note products, have expressed little interest in the additional ex-ante cost disclosures (and in some cases expressly request not to receive these disclosures).

In addition, the MiFID II/R costs and charges disclosure rules do not fully take into account the particularities of the wholesale market. For example, what should be considered a cost or charge with respect to principal-traded products, which are traded on an "all in risk price", where a firm takes a risk position and the client does not incur any explicit service charges (such as commission) or embedded product costs (such as distribution or management fees). Clients in the wholesale markets understand that the price does not include an explicit transaction cost but reflects the risk price at which the firm is prepared to trade with the client, having taken into account a number of risk factors, including risk of future price movements. Accordingly, the application of the regime in wholesale markets, where firms may act in a variety of different capacities and transaction scenarios, does not improve overall levels of information disclosure to wholesale clients.

In light of this, AFME members support the disapplication of the MiFID II/R costs and charges disclosures for professional clients and eligible counterparties. We note that ESMA, in its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID

II (ESMA35-43-2126), recommends allowing such clients to opt out of the ex-ante and ex-post requirements. However, ESMA also note that, only a small minority of respondents did not call for more flexibility or the disapplication of all of the MiFID II/R requirements in relation to wholesale clients, and the largest number of these call for disapplication. We urge the Commission to avoid adding yet further complexity to this regime, for which there is clearly such limited support from the intended beneficiaries of the information. Given the clear lack of benefit provided by ex-ante costs and charges disclosures in wholesale markets, AFME members believe that the rules should be disapplied for wholesale clients, rather than extending the possibility to clients to opt out. An opt-out from the MiFID II/R costs and charges rules would increase complexity and could be misunderstood by clients as meaning they are opting out of receiving fee schedules, trade confirms or any other pre-existing more detailed reporting that they do value. In addition, an opt-out approach creates a significant operational burden for firms, in particular the need to keep records of requests from clients to opt out.

Members do not believe that disapplying only certain aspects of the costs and charges requirements would address the shortcomings of the regime either as the professional client and eligible counterparty demand for additional, or reformatted, information on costs and charges is not evident.

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

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

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

Question 35.1 Please explain your answer to question 35:

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

AFME members confirm that the majority of clients prefer receiving information in non-paper format and therefore fully support a phase-out of paper-based information in order to reflect this. In addition, AFME members note that the phasing-out of paper-based information would reduce waste and support the EU’s sustainable finance agenda.

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

	Yes	No	N. A.
General phase-out within the next 5 years	◉	○	○
General phase out within the next 10 years	○	◉	○
For retail clients, an explicit opt-out of the client shall be required.	○	○	◉
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper based information	◉	○	○
Other	○	○	○

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

5000 character(s) maximum

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

In relation to how the phase out should be implemented, AFME members support the proposal put forward by ESMA, in its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II (ESMA35-43-2126), that Article 3 of the MiFID II Delegated Regulation be amended "so that, when information must be provided in a durable medium, the provision of such information by means of electronic communications shall become the norm and default option".

AFME members would be in favour of ensuring that the timing of any phase out provided existing clients with sufficient time to object to the receipt of non-paper based information if they do not feel that this is an appropriate option for them.

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

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

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

Question 37.1 Please explain your answer to question 37:

5000 character(s) maximum

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

AFME is not responding to this question.

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

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

Question 38.1 Please explain your answer to question 38:

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

AFME is not responding to this question.

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

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

Question 39.1 Please explain your answer to question 39:

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

AFME is not responding to this question.

3. Client profiling and classification

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

---

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

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

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

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

Question 40.1 Please explain your answer to question 40:

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

AFME members note that the existing client classification rules can be overly restrictive since they do not take into account the full experience in financial markets of a retail client when considering if the client is sufficiently sophisticated to trade in a particular instrument.

A firm may treat a client (other than a local public authority or municipality) as an elective professional client if it complies with both a qualitative assessment and at least two of the following quantitative criteria:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
(c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

In the view of AFME members, the element of the quantitative test that member firms often find not fit for purpose is limb (a) which relates to trading history. This test sets a high bar because it requires a demonstration of 40 previous transactions on the relevant market, spaced out over the previous four quarters. This neglects any assessment of clients who may have a life time of trading in equivalent instruments but for various reasons, have not in the previous quarter or clients who can evidence recent transactions in instruments of equivalent complexity which make it reasonable to assume the client is sophisticated enough to enter into a new transaction type.

This can be particularly problematic for newly incorporated corporate clients who may not warrant the full scope of the retail investor protection regime but who have no trading history or financial instrument portfolio on which to base the elective professional quantitative assessment. If such companies could draw on the trading history or assets of their principals (on whose knowledge and experience they can already rely for the purpose of the qualitative assessment), it would allow them, in appropriate cases, to opt up to elective professional status, which generally speaking, is more appropriate for these entities.

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

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

Question 41.1 Please explain your answer to question 41:

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

As mentioned in our response to Question 40.1, we do not see the 500,000 EUR threshold as the main stumbling block and would recommend focussing instead on (1) the trading history requirement and (2) making it easier for newly incorporated corporate clients (who may not need or want the full scope of the retail investor protection regime designed for individuals) to draw on the trading history and assets of their principals (on whose knowledge and experience they can already rely for the purpose of the qualitative assessment). This would allow those companies, in appropriate cases, to opt up to elective professional status, which, generally speaking, is more appropriate for them.

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

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

Question 42.1 Please explain your answer to question 42:

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

AFME members agree with ESMA’s recommendation, as set out in its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II (ESMA35-43-2126), that the creation of a new category of “semi-professional” or “sophisticated retail” client is not necessary or desirable, and would create additional unnecessary complexity to the current regime. That being said, AFME members are fully supportive of other less operationally burdensome and more effective options to facilitate greater access to financial markets by retail investors. AFME members’ preference therefore is for a change to the elective professional criteria, as set out in question 40.1 above, rather than adjustment of investor protection rules for semi-professional clients.

If the Commission were to proceed with the introduction of a “semi-professional” client category, AFME members would suggest that the following factors be considered:

1. Grandfathering: existing client categories should not need to be reviewed.

2. Elective professional status to be maintained: the existing regime allowing for opt-up from retail to elective professional status should be maintained.

Finally, given that the introduction of a “semi-professional” client category would necessitate a change to the Level 1 text, AFME members would encourage the Commission to use that opportunity to allow newly incorporated corporate clients, who may not warrant the full scope of the retail investor protection regime but who have no trading history or financial instrument portfolio on which to base the per se professional quantitative assessment, to opt to be treated as professional clients. If such companies could draw on the trading history or assets of their principals (on whose knowledge and experience they can already rely for the purpose of the qualitative assessment), it would allow them, in appropriate cases, to opt up to elective professional status, which, generally speaking, is more appropriate for these entities.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test						(x)

Information provided on costs and charges	○	○	○	○	○	◉
Product governance	○	○	○	○	○	◉
Other	○	○	○	○	○	◉

Question 43.1 Please explain your answer to question 43:

5000 character(s) maximum

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

AFME members' preference is for a change to the elective professional criteria, as set out in question 40.1 above, rather than adjustment of investor protection rules for semi-professional clients

If the changes highlighted in the answer to Question 40.1 were implemented, AFME members would not see a further need for mitigations/adjustments to the broader MiFID II/R investor protection regime.

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

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

5000 character(s) maximum

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

Taking into account the suggestions of AFME members in the answers to Questions 40.1 and 43.1, there would be no material changes to member firms current operations, in terms of time and resources allocated to the distribution process, as long as appropriate grandfathering measures were in place in relation to any changes to the Level 1 text and the right to opt up directly from retail to elective professional (by-passing any new "semi-professional" status) was maintained.

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

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

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

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

AFME is not responding to this question.

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

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

As set out in AFME's response to Question 47.1 below, AFME members consider that the regime imposes operational burdens on distribution of non-complex products (such as ordinary shares and bonds, but excluding UCITS) to mass market retail investors thereby potentially increasing the costs associated with and /or inhibiting retail clients' access such products.

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

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

Question 47.1 Please explain your answer to question 47:

5000 character(s) maximum

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

We believe that the MiFID II/R product governance (PG) regime should only be applied to complex products; and should clarify the application of the regime to non-wholesale markets so that it does not apply to business with eligible counterparties (ECPs) and per se professional clients).

Non-complex products (excluding UCITS)

Non-complex instruments such as ordinary shares and non-complex bonds are not "manufactured", as underwriting banks do not create, develop, issue or design them. Instead, companies issue ordinary shares according to their financing requirements, and not as financial instruments that are designed for investors (unlike, for example, certain retail structured products designed with end retail investors in mind). Nevertheless, under Recital 15 of the MiFID II Delegated Directive, MiFID investment firms advising corporate issuers on the launch of new financial instruments should be seen as manufacturers and comply with the PG rules.

The regime does not distinguish between "non-complex" and "complex" instruments as other aspects of the MiFID II/R investor protection regime (e.g. the appropriateness rules) do. Since it is important for syndicate banks advising on capital markets transactions to adopt a coordinated approach to MiFID II/R, AFME developed an industry standard position on compliance with the PG regime for ordinary shares (dated 15/12/2017).Syndicated banks in the EU have adopted this approach and AFME outlines the unique features of non-complex instruments and capital markets (when compared to other manufactured and complex instruments issued by MiFID investment firms) in defining a proportionate approach to application of the regime.

https://www.afme.eu/portals/0/globalassets/downloads/industry-guidelines/afne-mfd-mifid-ii-product-governance-regime.pdf

The primary practical change introduced by the PG regime for equity capital markets was the inclusion of disclosures related to the “retail” target market. For non-complex products aimed at mass market retail investors, the broad nature of the target market means that the regime provides no additional investor protection. Also, where mass retail non-complex products such as ordinary shares and non-complex bonds are traded on secondary markets, manufacturers are unable to control onward distribution, and it can be difficult for distributors to identify and access target market information provided by manufacturers. Many of the other measures set out in the AFME paper represent steps that syndicate banks already adhere to as part of their internal governance approvals upon launch of a new transaction. We do not believe that the regime is appropriate or needed. It should be disapplied for non-complex instruments such as ordinary shares and non-complex bonds, which we believe are wrongly deemed “manufactured in the context of equity and non-complex debt capital markets transactions and which are already subject to a range of investor protection mechanisms (such as the Prospectus Regulation, disclosure/transparency rules, the rules of the relevant competent authority of the regulated exchange in due diligencing and approving a transaction for retail distribution, and underwriting banks’ broader governance/risk framework).

If the Commission keeps non-complex instruments within scope of the PG regime, we suggest that no further interpretive changes are necessary. The regime has been in place for some time and market participants have carefully adapted their operations for compliance, as evidenced, for example by the widely adopted AFME approach to ECM transactions.

Wholesale markets
In wholesale markets, products are typically traded between sophisticated institutional counterparties who have a high degree of knowledge and experience, and who are willing and able to bear losses beyond the initial capital invested. Distribution is typically conducted on a non-advised basis, and counterparties trade for hedging or financing purposes. Accordingly, target market specifications are necessarily limited and of minimal value to distributors. Counterparties can undertake their own more sophisticated scenario analysis in the context of their broader trading strategies, and the PG regime provides limited protection for such investors. AFME believes that the regime should be simplified by restricting it to apply only to non-wholesale markets (such as restricting the regime so as to not apply to products distributed to ECPs or per se professional clients).

Firms are struggling with the relevant methodologies under the PG regime’s stress testing requirements (STRs) and how they should be adapted in particular non-complex products. We suggest a closer alignment between PG testing requirements and the PRIIPS regime for scenario analysis and SRI calculations, so that the STRs apply only to products which are in scope of PRIIPs and a PRIIPs KID can fulfil the PG requirements.

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

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

- Yes
-

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

Question 48.1 Please explain your answer to question 48:

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

The product governance regime currently permits sale of products to clients in the negative target market, with associated regulatory guidance making clear that this should be a rare occurrence in need of significant justification by the distributor. AFME members note that, in practice, many distributors choose only to sell within the manufacturer’s target market due to the operational burdens involved in producing their own target markets. However, there may be circumstances in which it is in the best interests of a client to distribute a product to them (such as for portfolio diversification or hedging purposes), notwithstanding that the client falls within the manufacturer’s negative target market for the relevant product. Accordingly, AFME members feel that the regime already provides an appropriate degree of investor protection, and further restrictions on sale to negative target markets are both unnecessary and could inhibit the ability of firms to provide their clients with appropriate products.

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

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

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

Question 49.1 Please explain your answer to question 49:

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

AFME agrees with ESMA’s conclusion in paragraph 36 of its Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II (ESMA35-43-2126), which states that ESMA does not recommend that the Commission bans inducements completely for all retail products in the EU without first conducting an impact assessment. AFME is of the view that any review of the current rules on inducements should be mindful of the potential for unintended consequences.

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

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

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

Question 50.1 Please explain your answer to question 50:

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

AFME members are not supportive of establishing an outright ban on inducements. AFME members agree with the position expressed in ESMA’s Technical Advice to the Commission that a ban may have uneven and potentially unexpected impacts across the EU given the prevalence of different distribution models in different Member States.

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

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

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

Question 51.1 Please explain your answer to question 51:

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

AFME is not responding to this question.

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

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

Question 52.1 Please explain your answer to question 52:

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

AFME is not responding to this question.

5. Distance communication

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

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

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

Question 53.1 Please explain your answer to question 53:

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

AFME is not responding to this question.

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

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

Question 54.1 Please explain your answer to question 54:

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

AFME members support a harmonised approach to telephone taping and record-keeping generally across Member States. We note that many Member States already had local regulation requiring telephone taping pre-MiFID II/R. MiFID II/R harmonised these, particularly around retention periods and governance. Unless there is a commitment that all Member States will also wind back their local laws on voice recording, winding back the MiFID II/R rule would not mean no taping, and would be very complex to implement. The MiFID II/R requirements in relation to taping and record-keeping systems were complex and costly to install in preparation for MiFID II/R implementation and therefore a wholesale revision at this time would be disruptive, costly and premature. AFME members note that the primary purpose of the taping and record-keeping requirements is not to reduce the risk of mis-selling but rather to counter market abuse and pre-dated MiFID II/R.

6. Reporting on best execution

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

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

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

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

Question 55.1 Please explain your answer to question 55:

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

Investment firms and their clients continue to be ardent supporters of achieving best execution and transparency. Implementation of the best execution reporting requirements has been costly for firms. However, the current best execution reporting regime (specifically RTS 27 and 28 reporting requirements) is not functioning optimally for end investors. End investors do not in the main find the current reports useful due to the over engineered nature of the requirements and the quantity of unhelpful data contained therein, and the fact that, in certain circumstances, the reports require the inclusion of information which is useless for end clients.

Intense effort is required to compile and validate each report. However, the resultant reports are overly complicated and have too many fields resulting in an overload of information which is difficult to interpret. The sheer scale of financial instruments in scope of the requirements undermines the overall policy objectives of the regime – including all financial instruments, the majority of which are not traded on trading venues (“ToTV”), risks overwhelming consumers of the reports with information of limited relevance. AFME members stress that the reports are framed in the context of electronic trading, which makes it inherently difficult to apply the requirements to voice or other trading scenarios (such as certain OTC trading activity), resulting in many of the metric indicators not being relevant. Furthermore, we note that some RTS 27 reports (such as those produced by systematic internalisers for non-equity instruments) contain superfluous information on bespoke instruments that are both unavailable and unsuitable for retail investors.

Finally, AFME members note that better pricing information is often available to clients through existing market data channels. Accordingly, AFME members are of the view that the best execution reporting regime is complex and needs simplifying.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Comprehensiveness	○	○	○	○	●	○
Format of the data	●	○	○	○	○	○
Quality of data	●	○	○	○	○	○
Other	○	○	○	○	●	○

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

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

We note that investment firms have made significant investments in the technology and processes required to produce the RTS 27 and RTS 28 reports. Therefore, we do not advocate for a hastily formulated wholesale review of the best execution reporting regime. Rather, AFME supports either removing the requirement to produce best execution reports in the first instance, or, alternatively (and if the reports are to be retained), significantly simplifying the reporting requirements in order to ensure that the needs of end users are addressed whilst reducing the operational impact on firms. Any review to simplify the requirements would, however, need to be subject to a considered and rigorous consultation process and changes should be carefully calibrated to ensure that they address the needs of end users of these reports and do not impose significant additional costs on firms.

Subject to such a consultation process, simplification could be facilitated by restricting the focus of the reports to areas in which meaningful comparisons are possible, such as by removing bespoke instruments or instruments which are not traded on trading venues from the scope of the reports.

In addition, the scope of the reports could be limited to trades executed. There also remains a degree of inconsistency amongst the industry as to whether execution venues should include activity carried out on trading venues in their RTS 27 reports, notwithstanding ESMA recently publishing Q&A aimed at clarifying the scope of application. AFME members suggest removing the requirement or for further guidance to be provided. Finally, AFME members suggest restricting the scope of the requirements to ToTV financial instruments only. This would significantly reduce the amount of excess data, would also allow for simpler and more effective comparisons of execution metrics in the same instruments to be undertaken between trading platforms.

Question 56.1 Please explain your answer to question 56:

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

AFME members consider it necessary to simplify the best execution reporting requirements and only maintain those provisions which are essential for the functioning of this regime.

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

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

Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57:

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

AFME members consider the cost of implementing best execution reports to far outweigh any benefits for investors, and that the reports (particularly RTS 27 reports) should be removed or simplified. As noted in our response to Question 55.1, in the experience of our members these reports offer little or no benefit for end investors. In light of the costs of implementing these reports, including the technology and system build costs that underlie them, any changes to this regime other than to remove or significantly simplify the reporting requirements are likely to impose additional implementation costs on firms. Accordingly, our members view it as critical that any changes to this regime are subject to rigorous review and consultation, incorporating input from both buy and sell side firms, to ensure that they effectively address all of the issues with the current regime.

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

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

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

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

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

The variation in AFME members' size and operating models constrains our ability to express a single generalised view on the effect of unbundling on the quantity, quality and pricing of research.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Introduce a specific definition of research in MiFID II level 1	X					
Authorise bundling for SME research exclusively	X					
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	X					
Prevent underpricing in research						
Amend rules on free trial periods of research						

Other	◯	◯	◯	◯	◯	◯

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

5000 character(s) maximum

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

Other proposals we have in order to increase the production of SME research:

MiFID II/R currently contains two different definitions of research to meet two different purposes: (1) conflicts management, and (2) the prevention of inducements. Both of these definitions, and the underlying policy rationales, are well understood and there is no need to change them. However, proposals that would create a different approach for SME research would artificially split the research market. This would be operationally difficult for producers and purchasers of research to understand and implement and be unnecessary because proposals that might benefit the SME market would probably be equally beneficial in relation to non-SME research.

Further, the market would need to keep track of the market capitalisation of companies in order to pick up those whose capitalisation had changed through any SME threshold. We believe that research is an important component of the decision-making process for investors generally, and therefore that all research purchased by investors should be subject to the same controls in terms of quality, independence and purchasing.

1.2. Alternative ways of financing SMEs research

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

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

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

Question 60.1 Please explain your answer to question 60:

5000 character(s) maximum

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

AFME is not responding to this question.

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

5000 character(s) maximum

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

AFME is not responding to this question.

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

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

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

Question 62.1 Please explain your answer to question 62:

5000 character(s) maximum

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

We do not think that the consultation either properly defines what it means by artificial intelligence or considers its impact in a way that would enable us to meaningfully contribute to the answer to this question. We believe that a more detailed consultation would need to be launched in order to properly to do so.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

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

AFME is not responding to this question.

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

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

Question 64.1 Please explain your answer to question 64:

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

AFME is not responding to this question.

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

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

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

Question 65.1 Please explain your answer to question 65:

5000 character(s) maximum

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

In our view, it is clear from Article 12(3)(b) of the MiFID II Delegated Directive, and from Question and Answer 6 of section 7 of the ESMA Investor Protection Q&A, that such issuer-sponsored research can qualify as an acceptable minor non-monetary benefit. We note that issuer-sponsored research already exists as a service which is treated as an acceptable minor non-monetary benefit in some EU jurisdictions. We do not believe that further guidance or amendments to the legislation are required to make the position clearer.

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

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

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

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

At the moment, the definition of investment research sets out a number of criteria that must be met before any document can amount to investment research. Investment research is information suggesting an investment strategy intended for distribution, which is labelled or described as investment research, or otherwise presented as an objective or independent analysis. In our opinion, issuer-sponsored research may qualify as investment research if it meets these requirements. In relation to issuer-sponsored research, a key aspect is whether it is "labelled or described" as investment research, or is "otherwise presented as an objective… explanation".

In our view, the approach taken to ensuring that it is clear that the document is sponsored by the issuer, rather than being produced by the investment firm without such sponsorship, is likely to mean that the information is not investment research, because it is not presented as an objective explanation. We believe this to be the prevalent approach in the EU at the moment, but we do not think it is possible or helpful to definitively state that any issuer-sponsored research cannot qualify.

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

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

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

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

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

In our view, it is clear that issuer-sponsored research can currently be produced and can constitute an acceptable minor non-monetary benefit. We also consider that the existing guidance relating to conflicts of interest management, clarity in communications, and rules relating to marketing communications, are sufficient and do not need further amendment.

We note, however, that the rules relating to issuer-sponsored research are not relevant in the context of pre-IPO (or other transactional) research, where such research is not sponsored by the issuer, but is produced by the Research department on behalf of its investor clients. If, in light of the public consultation, amendments are proposed in relation to either SME research or issuer-sponsored research, we believe it is important that they do not affect the existing approach to the treatment of pre-IPO (or other transactional) research in any way.

As identified in our response to Question 59, we believe that an important step that could be taken to promote both SME research specifically, and the production of investment research more generally, is making clear that pre-IPO research of this type, although not paid for by the issuer, can still be distributed to and received by potential investors free of charge as an acceptable minor non-monetary benefit. This is currently the position in some, but not all, EU markets thanks to NCA guidance that, in this limited scenario, such research is comparable in nature and scale to issuer-commissioned research coverage, which is already permitted under Article 12(3)(b) of the MiFID II Delegated Directive.

We believe the rationale for this assessment is strong. Where research is produced in advance of an IPO (or other capital markets transaction), it is produced in order that a potential investor base can better understand the investment proposition, and is made available to numerous potential investors. The correct policy (and existing legislative) outcome is, in our view, that this should be treated as an acceptable minor non-monetary benefit.

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

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

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

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

In our view, it is clear that issuer-sponsored research can currently be produced and can constitute an acceptable minor non-monetary benefit. We also consider that the existing guidance relating to conflicts of interest management, clarity in communications, and rules relating to marketing communications, is sufficient and does not need further amendment.

We note, however, that the rules relating to issuer-sponsored research are not relevant in the context of pre-IPO (or other transactional) research, where such research is not sponsored by the issuer, but is produced by the Research department on behalf of its investor clients. If, in light of the public consultation, amendments are proposed in relation to either SME research or issuer-sponsored research, we believe it is important that they do not affect the existing approach to the treatment of pre-IPO (or other transactional) research in any way.

As identified in our response to Question 59, we believe that an important step that could be taken to promote both SME research specifically, and the production of investment research more generally, is making clear that pre-IPO research of this type, although not paid for by the issuer, can still be distributed and received free of charge to potential investors as an acceptable minor non-monetary benefit. This is currently the position in some, but not all, EU markets thanks to NCA guidance that, in this limited scenario, such research is comparable in nature and scale to issuer-commissioned research coverage, which is already permitted under Article 12(3)(b) of the MiFID II Delegated Directive. We believe the rationale for this assessment is strong – where research is produced in advance of an IPO (or other capital markets transaction), it is produced in order that a potential investor base can better understand the investment proposition, and is made available to numerous potential investors. The correct policy (and existing legislative) outcome is, in our view, that this should be treated as an acceptable minor non-monetary benefit.

IV. Commodity markets[8]

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

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

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

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

---

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

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

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

The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	◯	◉	◯	◯	◯	◯

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	AFME is not responding to this question.
Costs	AFME is not responding to this question.

Qualitative elements for question 69.1:

5000 character(s) maximum

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

GFMA members are broadly supportive of the underlying aims of the position limits framework and pre-trade transparency regime and we welcome work undertaken by the Commission to improve the stability and integrity European commodity markets. However, in our view, there are adjustments that could be made in order to appropriately calibrate the existing regulatory framework to EU markets which will serve to enhance the competitiveness and performance of EU commodity markets. In particular, GFMA members recommend that the Commission seeks to address two key issues:

1) Clarifying the definition of commodity derivative and the resulting scope of position limit framework
2) Addressing the lack of flexibility of the position limits regime for new and illiquid contracts

The intention of the position limits regime, as stated in RTS 21, is to support “orderly pricing and settlement arrangements, developing new commodity derivatives and enabling commodity derivatives to continue to support the functioning of commercial activities in the underlying commodity market”. GFMA members support these objectives and have implemented costly position management and reporting systems to ensure compliance with their requirements under Article 57 and Article 58 of MiFID II. However, there remain issues with the regime which should be addressed in order to ensure the improved functioning of the position limits framework.

GFMA recommends that the Commission provides clarification of the definition of commodity derivatives as set out under Article 2(1)(30) of MiFIR. Market stakeholders have struggled with the fact the current definition draws securitised derivatives into scope as well as certain derivatives which do not have an underlying physical commodity. This issue was addressed by ESMA in updates of its Q&As on commodity derivatives topics in December 2016 and March 2018, however there remains uncertainty over these contracts.

GFMA members agree with ESMA’s view set out in its consultation paper (CP) on position limits and position management that “the position limit framework fails to recognise the unique characteristics of securitised derivatives compared to other commodity derivatives and therefore does not appear to be an appropriate tool for preventing market abuse and ensuring orderly pricing and settlement conditions in those instruments”. It is worth noting that securitised derivatives are already covered by MAR and that, in the context of commodities, they have no physical underlying and therefore cannot have an effect on physical commodity markets. GFMA also agrees with ESMA’s conclusion that the standard features of the position limit framework (e.g. open interest, deliverable supply, lots, spot/other months and delivery date) do not apply to securitised derivatives. Finally, GFMA agree with ESMA’s view that most securitised derivatives are ultimately held by a large number of retail investors, which does not raise the same risk of either abuse of a dominant position or to orderly pricing and settlement conditions as for ordinary commodity derivative contracts.

GFMA therefore recommends amending Article 2(1)(30) to exclude securitised derivatives from the scope of commodity derivatives and consequently the position limits regime.

In relation to new and illiquid contracts, GFMA considers that the scope of the position limits regime has been a challenge for market stakeholders as it has restricted the capacity for growth and development meaning that the varying needs of market participants have not been met through the use of EU contracts.

The application of a restrictive standardised position limit of 2,500 lots to new or illiquid contracts means that market participants are forced to decrease any sizeable positions, reducing open interest and thereby creating a perpetual cycle where the contract will always remain illiquid. Once a limit is reached, market participants may withdraw from the market, often switching to another trading venue outside the MiFID II/R regime. National Competent Authorities are able to use different derogations for the purposes of illiquid contracts with an open interest between 5,000 and 10,000 lots, however this remains difficult to apply in practice and fails to mitigate the impact of disproportionately low position limits.

In light of these challenges, GFMA members have expressed their support for ESMA's proposal to amend Article 57 to mandate ESMA to develop specific Level 2 measures with regard to new commodity derivatives contracts, and in particular determine when position limits should start applying to those derivative contracts. However, GFMA would also support a reduction of the scope of the position limits regime to a limited set of significant or critical contracts. We note that this would align the EU position limits framework with the U.S. equivalent bringing added benefits with regard to the competitiveness of EU commodity derivatives markets.

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

Please specify what other scope you consider most appropriate for the position limit regime:

5000 character(s) maximum

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

AFME is not responding to this question.

Question 71.1 Please explain your answer to question 71:

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

GFMA members believe that the scope of the position limits regime has been a challenge for market participants, particularly in relation to nascent or illiquid contracts which require the capacity for development and growth in order to meet the varying needs of market participants. GFMA recommends that the Commission and ESMA consider short term Level 2 measures (ESMA's Option 2 in its CP on position limits and position management) that can be undertaken to enhance the current regime before undertaking a fundamental review of the position limits framework which limits the scope of the regime to a list of critical contracts (ESMA's Option 1 in its CP on position limits and position management).

Although, GFMA would support a combination of the options ESMA presented in its CP, we consider that the proposed changes to Level 2 (under Option 2) remain too restrictive. GFMA considers that the 12-month period prior to when position limits start to apply is too short and should instead be 24 months. Additionally, GFMA members recommend applying a 10,000 lot de minimis limit to contracts that have not exceeded 20,000 lots after 24 months.

Regarding Level 1 changes to the position limits framework, GFMA would also support a reduction of the scope of the position limits regime to a limited set of significant or critical contracts. The set of criteria to determine which contracts are deemed to be critical should consider:

- Contracts associated with deliverable supply
- Nature of the underlying commodity
- Size of the market
- Importance of the supply of the underlying commodity across the EU
- Existence of non-EU markets for the same commodity

We note that this would allow for the development of nascent and illiquid contracts whilst also aligning the EU position limits framework with the U.S. equivalent (enhancing the competitiveness of EU commodity derivatives markets).

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

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

- [x] Open interest
- [x]

Type and variety of participants
- [x] Other criterion:
- [ ] There is no need to change the scope

Open interest:

Threshold for open interest:

Number of affected contracts in the EU for open interest:

Type and variety of participants:

Threshold for the type and variety of participants:

Number of affected contracts in the EU for the type and variety of participants:

Other criterion:

Please specify what other criterion could be used and explain your answer:

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

AFME is not responding to this question

Threshold for this other criterion:

Number of affected contracts in the EU for this other criterion:

Please explain why you consider that the open interest is a criterion that could be used:

5000 character(s) maximum

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

AFME is not responding to this question

Please explain why you consider that the type and variety of participants is a criterion that could be used:

5000 character(s) maximum

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

AFME is not responding to this question

Question 72.1 Please explain your answer to question 72:

5000 character(s) maximum

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

GFMA members note that Article 57(1)(b) of MiFID II/R calls for the position limits regime to ensure, in particular, “convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity”. It would therefore be in keeping with the underlying goal of the position limits regime to apply the framework to contracts where there is an associated deliverable supply.

In order to ensure that the position limits framework is appropriately limited and in order to bring associated benefits to nascent and illiquid contracts, GFMA would also support including the consideration of the nature of the underlying commodity, the size of the market, the importance of the supply of the underlying commodity across the EU and the existence of non-EU markets for the same commodity.

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

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

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

Question 73.1 Please explain your answer to question 73:

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

AFME is not responding to this question.

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

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

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

Question 74.1 Please explain your answer to question 74:

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

GFMA members believe that the scope of the position limits regime has been a challenge for market participants, particularly in relation to nascent or illiquid contracts which require the capacity for development and growth in order to meet the varying needs of market participants. The introduction of a position limit exemption for financial counterparties under mandatory liquidity provision obligations would benefit both nascent and illiquid contracts. GFMA members would therefore recommend that a position limit exemption for a financial counterparty under mandatory liquidity provision obligations is applied in a similar manner to the liquidity provision exemption set out in Article 2(4) in MiFID II.

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

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

Question 75.1 Please explain your answer to question 75:

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

GFMA members consider that liquidity providers would be better equipped to fulfil their role within EU commodity derivatives markets through the introduction of a hedging exemption for financial counterparties.

GFMA notes that broadening the application of the hedging exemption in this way would ensure closer alignment of the EU position limits regime and the US position limits regime which includes a bona fide hedging exemption which is not restricted to non-financial entities (enhancing the competitiveness of EU commodity derivatives markets).

2. Pre-trade transparency

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

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.						
The MiFID II/MiFIR costs and benefits with regard to the DTO are						

balanced (in particular regarding the regulatory burden).						
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.						
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.						
The DTO has provided EU added value.						

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	AFME is not responding to this question.
Costs	AFME is not responding to this question.

Qualitative elements for question 77.1:

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

AFME is not responding to this question.

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

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

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

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

Question 79.1 Please explain your answer to question 79:

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

AFME is not responding to this question.

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

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

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

Question 80.1 Please explain your answer to question 80:

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

AFME is not responding to this question.

VI. Multilateral systems

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

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

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

- 1 - Disagree
- 2 - Rather not agree
-

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

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

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

AFME members consider the definition of multilateral system outlined under MiFID II/R to be understood by the industry (at both EU and national level) and does not require further clarification. These systems enable a more appropriate and secure way of accurately transmitting data aligned with the order record-keeping requirements outlined in MAR.

VII. Double Volume Cap[10]

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

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

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

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

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

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	AFME is not responding to this question.
Costs	AFME is not responding to this question.

Qualitative elements for question 82.1:

5000 character(s) maximum

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

AFME members support the removal of the DVCs. The application of the double volume caps came without any assessment on what correct levels of dark trading should be and AFME is unaware of any evidence that the caps imposed have avoided any damage to price formation.

The DVC mechanism does not result in positive outcomes for end-users and contributes to complexity in European market structure. The DVC mechanism has been and is still difficult to understand for the wider investor community, whether inside or outside of the EU due to the complexity it introduces to European market structure and interventionist nature of restricting certain modes of trading above arbitrary thresholds.

EU markets are alone in having a volume-based constraint on dark trading, making them a global outlier in attempting to constrain trading activity that has the objective of achieving better execution performance for end investors by reducing market impact and therefore implicit cost. There is no evidence of similar concerns around levels of dark trading in other developed markets. This constraint serves to make European capital markets less competitive when measured against developed third country markets including the US, Canada, Japan and Switzerland, and is thus inconsistent with the objectives of the Capital Markets Union.

Furthermore, a number of issues have arisen due to the technical details of DVC calculation and implementation. AFME notes that the DVC creates an outsized technology burden in administering the caps for regulators, as well as market stakeholders. This burden has not been justified by any proven benefit to price formation, transparency, or overall market quality. Indeed, the DVC mechanism has been shown to disrupt the smooth functioning of the market, due to large fluctuations in the percentage of dark trading. Stock suspensions vary month to month between more than 1260 instruments suspended (August 2018, monthly dark MTF trading stood at 5.8%) to 275 stocks (June 2019, dark trading returned to 8.4%).

We also note that the application of the DVC has led to undue trading disruption for all market stakeholders. One recurring issue is that the same DVC data can contribute to consecutive suspensions (as suspensions are for 6 months but the DVC assessment is based on rolling 12-month data). Furthermore, inaccurate DVC data submissions have led to monthly data restatements (resulting in a stock being suspended one month and the suspension being lifted the next month) causing operational burden and further disruption for trading participants.

AFME members note that CLOBs are in fact supported to a large degree by other trading systems that provide other forms of pre-trade transparency and, crucially, by post-trade transparency. CLOBs are 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 CLOBs (and therefore aids price formation on CLOBs and other pre-trade transparent venues). We also note that there are a number of other factors contributing to price formation, market sentiment, news, earnings and other issuer statistics disclosed under issuers' continuous disclosure obligations, to mention but a few. 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.

Should the DVC mechanism be retained, AFME would oppose further restrictive conditions through the imposition of minimum thresholds of size per order on the use of relevant waivers (as proposed within ESMA's CP on equities transparency topics) as this would only serve to make the framework even more complex.

In addition, we would not support extending the scope of application of the DVC to systems that formalise negotiated trades for illiquid instruments. The NT waiver is widely used for trading illiquid instruments, where liquidity is often thin in lit order book. As a result, investors tend to favour trading in primary exchange auctions (and more recently as well on periodic auction books) or bilaterally, often against an SI willing to provide a risk price on the asset. Not all clients will be comfortable or permitted to trade under the latter arrangement. Negotiated trades in such a case enable a bilateral negotiation processed through a venue.

VIII. Non-discriminatory access[11]

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

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

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

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

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

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

Question 83.1 Please explain your answer to question 83:

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

AFME believes that the MiFID II/R framework already contains a suitable framework for assessing the benefits and risks of granting Open Access. AFME supports the implementation of the open access regime for ETDs by MiFID II/R’s intended date of July 2020. Open access will bring real benefits to the European markets and is an important prerequisite to an integrated Capital Markets Union.

We believe that open access could benefit the market by potentially increasing competition, improving client choice and could lead to netting and cross-margining benefits. However, we also acknowledge that open access could also bring risks, which should be carefully weighed against these benefits, if not properly managed.

For example, clearing members could be potentially exposed to increased risk at the CCP, particularly if the CCP groups more volatile or less liquid products that the clearing member does not clear (e.g. crypto derivatives) in the same segment as products that they do clear.

Nevertheless, the current MiFID II/R rulebook already provides an extensive and carefully crafted regime of checks and balances weigh up these risks against the benefits. Art. 35/36 6(a) MIFIR (and Delegated Regulation 2016/3807) lists a balanced set of conditions under which a CCP can refuse open access, which specifically addresses the aforementioned risks. Furthermore, Art. 35/36 6(c) and aforementioned Delegated Regulation provide broadly defined powers for National Competent Authorities to refuse open access where this is 'deemed a threat to smooth and orderly market functioning' , would 'adversely affects systemic risk' or would lead to 'market fragmentation'.

There is also the extra safeguard of an ESMA recommendation to the Commission on the functioning of the open access regime, which is currently planned by January 2022 (only 1.5 years after open access would actually enter into force).

In addition, as part of the MIFID II/R legislative text, the inclusion of Exchange Traded Derivatives in the open access requirements was subject to extra scrutiny to identify potential financial stability risks that could warrant a special exemption for this asset class. Subsequently, from 2016 onwards there have been industry consultations, followed by an ESRB advice, followed by an ESMA advice and finally a Commission decision on the topic. All three institutions were united in their view that there were no grounds to exclude ETDs from open access.

In conclusion, MIFID II/R appropriately balances the benefits and risks of open access. AFME supports the implementation of the open access regime for ETDs by MIFID II/R's intended date of July 2020. Open access will bring real benefits to the European markets and is an important prerequisite to an integrated Capital Markets Union.

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

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

Question 84.1 If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

5000 character(s) maximum

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

AFME members strongly believe that fair and open access to trading and clearing infrastructure as mandated by the existing MiFID2/R rules is vital for integrated, safe, efficient and continuous markets. Open access leads to lower costs, deeper pools of liquidity, improved service levels, greater capital efficiency and more innovation.

Our vision is for a truly integrated, low risk and low cost post trading system in Europe with post-trade infrastructures and service providers that 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.

We believe that such a system is necessary to support a vision of a Capital Markets Union that combines integrated pan-European markets, together with a diversity of market participants, business models and capital market eco-systems across all European countries.

This idea of open access as a key element of integrated post trading landscape is not new. It was first identified by the Giovannini Group in 2001 as a necessity to integrate Europe's capital markets.

Cost efficiencies could emerge for example through netting advantages by clearing instruments from multiple venues at a single CCP. Where two equivalent products are each cleared at a different CCP (because they each trade at vertically integrated CCP/venue combinations) firms cannot nett their exposures and therefore have to pay extra margin. In a situation of open access, these two margin pools could be offset, creating significant capital efficiencies (we would note however, that conversely, liquidity pools may be split where multiple CCPs clear the same product).

Furthermore, this frees up collateral in a world where collateral is increasingly scarce. As such, open access contributes to deeper pools of market liquidity. Note that margin efficiencies also exist among products that are not entirely equal (IRS futures for example).

Also, open access could lead to lower execution costs and more innovation. The inability to net margin creates a significant barrier to entry for execution venues that could otherwise emerge to compete with incumbent exchanges. From a client's perspective, changing execution venue is only attractive where execution costs savings (and other benefits) outweigh margin inefficiencies. This requires a (very) large scale, which is practically impossible for a new entrant. This means competing venues do not emerge to challenge the incumbent, which means there is no pressure on the incumbent to cut costs, improve service levels, or to innovate.
The same logic applies to competition among CCPs for access to a venue. This should lead to lower costs and more innovation.

It is for this reason that a recent Greenwich/FIA survey among 190 market participants lists 'more competition among clearinghouses' as the second most cited change request by respondent .

The lower costs associated with competition go beyond execution and clearing. As AFME's recent response to ESMA's market data consultation made clear, market dominance is a key determinant of a venue's ability to charge higher fees for their data . As such, more competition in execution because of open access should lead, all else equal, to lower data costs for impacted instruments.

In conclusion, AFME supports the implementation of the open access regime for ETDs by MIFID II/R's intended date of July 2020. Open Access will bring real benefits to the European markets and is an important prerequisite to an integrated Capital Markets Union. MIFID II/R appropriately balances the benefits and risks of open access.

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

Please explain your reasoning and specify which countries:

5000 character(s) maximum

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

As one of the largest clearing houses in the world, LCH is a good example of a CCP which has open acess as its business model. Coupled with robust risk management principles it has turned this concept into a profitable business model from which market participants have been able to benefit. In the equities space, Equityclear clears for a broad range of venues such as Aquis, CBOE, Equiduct, ICAP, Nasdaq, Oslo Bors, Six, Traiana, Turqoise and BlockMatch. For repo and bonds, apart from MTS, RepoClear clears for Brokertec, TP Repo, Tradition, CME and Tradeweb.

For OTC swaps, SwapClear has established connectivity with around 40 execution venues: including Bloomberg, BGC, Dealerweb and Nex. CDSClear connectivity includes Bloomberg and Tradeweb, while CommodityClear is connected with numerous Euronext commodity futures & options.

Another example of a CCP with open access as its business model is EuroCCP. This CCP provides clearing services for 37 venues including Deutsche Borse, CBOE, Nasdaq, London Stock Exchange, Euronext, Turquoise and Aquis.

These examples demonstrate that across swaps, equities, bonds, commodities and repo there are numerous cases where open access has led to successful outcomes for the markets. It is now time to broaden these benefits to Exchange Traded Derivatives.

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

5000 character(s) maximum

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

AFME is not responding to this question.

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

Please explain your answer:

5000 character(s) maximum

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

AFME is not responding to this question.

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

Please explain your answer:

5000 character(s) maximum

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

AFME members believe that digitalisation and new technologies can bring significant benefits to the trading lifecycle. In 2018 AFME published a report on new technologies expected to impact investment banking over the next five years and identified that technology is one of the most powerful levers banks have to address current industry challenges and deliver future opportunities. New technologies will enable banks to enhance client service and offerings, drive productivity, increase collaboration and partnerships, and open-up new ways of operating.
Within the report, AFME identified the following elements of the bank value-chain where digitisation and new technologies will directly, or indirectly, benefit the trading lifecycle:

• Sales & Relationship Management, Trading, Advisory, Research (e.g. Sales and Trading): The trading and sales function is likely to change where new technology capabilities further enable the automation of traditional core front office activities, such as predictive modelling and trade execution. These roles will increasingly be supported by AI Cloud-based tools that can provide services such as news sentiment and market volatility analysis for financial forecasting and early warning signalling.

• Trade Support & Processing, Product Management, Client Support & Servicing (e.g. post-trade): Trade execution and processing will become increasingly electronic and automated, through innovations such as 'smart contracts' (enabled on DLT) that can automatically execute based on pre-agreed conditions.

• Risk Management, Finance & Treasury, Legal & Compliance (e.g. Risk, Compliance and Finance): Processes will become more automated, employing Data Analytics and Cloud Computing technologies. More sophisticated tools, using AI, will support complex analysis of multiple financial and risk factors to drive optimal use of the balance sheet, regulatory capital, liquidity, and funding.

• Technology & Infrastructure (e.g. Information Technology): Value-add technology services (such as engineering) will move from cross-functional teams and into business lines. This may lead business and IT skills to further converge as roles become more technology enabled. Individuals within the business may become more technologically literate, through easy to access, and open source tools.

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

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

Question 89.1 Please explain your answer to question 89:

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

AFME members believe digitisation and new technologies can bring significant benefits to capital markets, including the role of EU trading venues. In line with our response to Question 88, trading venues may benefit where execution and processing becomes increasingly electronic and automated (such as through innovation on ‘smart contracts’ enabled by DLT). New technologies, such as the example provided, can help drive greater Straight-Through Processing (STP) of trading activity which could lead to further opportunities to shorten existing settlement cycles and reduce costs.

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

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

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

Question 90.1 Please explain your answer to question 90:

5000 character(s) maximum

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

AFME is not responding to this question.

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

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

Question 91.1 Please explain your answer to question 91:

5000 character(s) maximum

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

AFME is not responding to this question.

X. Foreign exchange (FX)

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

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

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

Question 92.1 Please explain your answer to question 92:

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

AFME supports the Global FX Division of the Global Financial Markets Association’s (GFMA) response to this question.

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

Please explain your answer:

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

AFME supports the Global FX Division of the Global Financial Markets Association’s (GFMA) response to this question.

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum

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

The Association for Financial Markets in Europe represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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

Please explain your answer:

5000 character(s) maximum

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

AFME is not responding to this question.

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

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

Useful links

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

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

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

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

Contact

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