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

EBF_041236

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

Question	Answer
Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?	2

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:	We are concerned that regulatory instability may increase. The publication of new regulations and the periodic review of those already in force give rise to continuous changes in the “rules of the game”. These require time and significant efforts (economic, administrative, technological, etc.) in order for firms and other market operators to implement the new regulatory requirements. In this respect we would like to stress that, although we believe there is room for simplifying the current regulatory framework, any potential amendments should be carefully analyzed in order not to impose to new burdens and relevant costs on the financial industry. We also would like to underline that the current economic context is even more difficult now and that any change should be carefully considered. Financial Markets are needed for a recovery from the effects of the Covid 19 pandemic and new regulatory challenges would not be welcomed. Actually, we should make sure that any amendments to MiFID/MiFIR framework would not have an impact on the liquidity of EU markets, in particular as the long-term effects of COVID-19 are unknown. In this connection, it is key to consider the combined effect of all proposals by COM and ESMA (data quality, SSTI and liquidity assessment). Whilst level 1 legislation has been rather clear, level 2 and especially level 3 legislation has proven to be incoherent as well as multi-interpretable and often too late. First, clarification of the legislation was limited in the initial phase of MiFID II. When clarification (for example in the form of level 3/Q&A’s) came, it was too late as financial market participants had already implemented new procedures and/or systems (after all, the directive became effective starting from 3rd of January 2018 already). Second, we have seen multiple interpretations of MiFID II / MiFIR by supervisors, as well as different methods of supervising (i.e. “laissez-faire” approach vs. thorough supervisory investigations). Notwithstanding the foregoing, this opportunity should be taken into account to: ● Review the information requirements towards professional clients and eligible counterparties, not only concerning costs and charges but as a whole.

- Align the various legislation requirements in order to make them reasonable and coordinated (MIFID, UCITS, PRIIPS, prospectus, MAR etc.) (e.g. one single procedure for the delivery of ex ante cost disclosure, KI(i)D, statement of procedure in case of contacts with clients on distance); The actual practice with Covid-19 demonstrates the importance at this moment but also in the future.
- Regulate the provision of all information and documents by electronic means, included through a website, by default, as it has been already done for, for example, pension funds with IORP II. Provision of any information on paper should only be provided upon specific request by the client. This is the most accurate position considering the general access of people to electronic means and grants the access to all needed and most updated information even in extraordinary situations.
- Review the product governance requirements in order to simplify the rules with regards to non- complex financial instruments, to adjust the approach required both for manufacturers and distributors.
- Clarify and amend the criteria for opting-up retail clients to elective professional clients.
- Improve the use, alignment and timeliness of Q&A for different legislation requirements (MAR, MiFID, UCITS, PRIIPS), thus allowing market players to achieve a deeper understanding of the applicable legislation. While ESMA Q&A are good for showing examples of particular events which are then better understood also by non-legal readers, it should be ensured that such examples are provided with proportionality assumptions.
- Make sure that any new information requirements should be made subject to client/consumer testing. We would also like to underline that firms get sufficient time to implement amendments.

We believe that in the CMU context, and in the COVID 19 recovery, a more flexible approach should be taken regarding investor protection requirements. A high level of protection is obviously required. However, investors should not be disincentivize to invest corporates via financial markets.

In order to make progress towards MiFID II/MIFIR objectives of creating a harmonized market and of having a level playing field, it is of the essence that legislators and supervisors in the different European Union countries transpose the European Directives and adopt supervisory practices on the very same or similar ways. This may not be the case with the transposition and interpretation of MiFID II which may have led to unbalanced situations in the different Member States.

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?

Statement	Rating
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	3
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	2
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	3
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	2
The MiFID II/MiFIR has provided EU added value.	3

Question 2.1 Please provide qualitative elements to explain your answers to question 2:	While we believe that it is still too early to capture and assess all impacts of the regulation, we consider that, the most visible achievement in terms of objectives was (i) the increase of fairness and transparency and more integration across the EU market regulation framework, (ii) benefits achieved regarding investor protection, (iii) more information and transparency to non-professional clients and higher level of commitment from the financial institutions and (iv) more control/knowledge of financial markets activities. In terms of costs/benefits, the short-term balance is unfortunately still pending to the cost side. Besides, costs and benefits are not balanced regarding the regulatory burden. We believe clients are (and definitely, as studies show, feel) hardly more protected than before MiFID II implementation. If all costs (regarding IT changes, legal and compliance adjustments, operational and commercial considerations) are added up, it is hard to agree with a statement that costs and benefits are balanced in the case of MiFID II implementation. In our view, the biggest challenges and difficulties are on the implementation process, namely the different interpretation and application of MiFID II/MiFIR framework by financial industry players, considering the level of consistency between different EU and National regulations and the remaining work to be done in terms of supervisory convergence, not only regarding MiFID II/MiFIR but also regarding the impact of the interplay between MiFID II/MiFIR with other pieces of regulations such as PRIIPS or UCITS. Supervisory guidance to NCAs would be critical to ensure consistency and harmonisation among producers and distributors of financial instruments and financial services among Members States as well as to avoid competition distortions between investment firms operating under direct supervision and those acting under the MiFiD passport.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?	4
Question 3.1 Please explain your answer to question 3:	MiFID II is a European directive which is not self-executing and requires implementing measures by the European competent authorities. This margin of discretion has led to different interpretations in each member state, which is an obstacle to a common and effective implementation. In critical aspects of the Directive, ESMA should ensure that common guidelines are issued to avoid different interpretations across member states which imply different level playing fields. The delay on the transposition process and the lack of uniform interpretations on several dimensions of the regulatory framework brought uncertainty to the implementation of MiFID II/MiFIR. In addition, some uncertainties still arise regarding (i) the typology of financial instruments; (ii) domestic investor protection rules regarding disclosure duties and formal warnings concerning the selling and distribution of financial instruments qualified as PRIIPs (iii) the reporting; (iv) structure of organisations; and (v) digital solutions.
Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post-trade transparency for financial instruments in the EU?	3

Question 4.1 Please explain your answer to question 4:

As regards the pre- and post-trade transparency for equity and non-equity in MiFIR there has been some increased transparency. However, there are still many challenges to be solved in relation to data quality and lack of standardization. Whilst the EBF understands that additional work may need to be done in this area we want to underline the importance of a cautious approach when considering amendments to MiFIR at this point in time. The effects of COVID-19 are not yet known and it is therefore not a good time to introduce new rules that could affect the liquidity and, hence, the ability of Member States and companies to finance themselves on the EU capital markets.

Generally, as regards investor protection rules, the perception is that transparency increased. Even though we consider that the final investors are yet to take advantage of the transparency framework, requirements like (i) information on costs and charges, (ii) record keeping and (iii) post-sale reporting contributed to increase the level of transparency in the market.

In particular, for complex financial instruments produced and marketed in a standard manner, the MiFID II/MiFIR framework has enabled greater transparency, not only in terms of pre-contractual documentation but also in the level of post-contractual information through information regarding costs, as well as transactions. Investors have more information which increased comparability among products but, in some cases, more information may also contribute to greater confusion of clients – over informative rules will certainly increase the distribution costs without necessarily strengthen the previous level of protection for non-professional investors.
The MiFID disclosure rules – as well as the PRIIPS rules for KID - shall be more flexible to allow the calibration between the mandatory information to be provided (minimum level of protection) and the possibility of providing further information upon investor request and considering specific risks and complexity levels of the financial instrument sold and the nature of the investment service provided.

In the meantime, there is still a lack of uniformization among participants and consolidation among different EU regulation such as PRIIPs and MIFID 2.

The lack of harmonization on transparency requirement such as RTS 27 publications in both terms of format and content among European competent authorities makes data comparability difficult. Levelling the playing field through the publication of common guidelines at a European level is crucial at this stage.

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?	3
Question 5.1 Please explain your answer to question 5:	We consider that the MiFID II/MiFIR regulatory framework brought more clarity and control on the market players and a clearer framework for the different venues and investment firms operating as systematic internalisers. Finding the right balance between SIs and trading venues is essential for the success of the SIs regime. The main difference between SIs and the rest of the trading venues is that SIs are characterized by risk-facing non- anonymous transactions that impact the Profit and Loss account of the firms, while trading venues are facilities in which multiple third-party buying and selling interests anonymously interact in the system, taking no risk. Therefore, there is a need of levelling the playing field between both types of marketplaces, by providing the proper tools for SIs to be able to comply with the Pre-trade Transparency requirements. As a first step, the deletion of the obligations to trade on published prices with other clients shall be considered. This is being addressed through the commercial policy, although in line with question 8 it is believed it should be simplified in MiFIR directly. The EBF therefore fully support ESMAs proposals to abolish the obligation to execute transactions with other clients in article 18 (6) and 18 (7) MiFIR. Therefore, it should also be considered to delete 18(5) MiFIR and to allow SIs to quote on an anonymous basis.
Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?	4

Question 6.1 If you have identified such barriers, please explain what they would be:	The product governance framework brought regulatory burdens that made investment firms reduce the variety of products available to customers. We agree that requirements on the target market tend to guarantee that investors have access to financial instruments that suit their needs. This is adequate to categorize mass market clients and an efficient way to present them with new products. However, it becomes less efficient for wealthier clients with higher knowledge level, where specific objectives/needs can change and may not fall in the target market they were previously categorized in (and reflects how client see themselves in the medium/long term). In this situation, it will be more difficult for financial institutions to approach these clients with product ideas that are not currently in the scope of the client profile, although they would make sense, for instance, in terms of portfolio diversification. We would then propose to narrow down the scope of target market requirements to exclude simple products such as shares and bonds. In addition, we also consider, as mentioned before, that doubts arising from the integration of this framework into national legislation hampered the implementation process as well as national regulation specificities. This is especially relevant regarding complex products, since national competent authorities tend to make a broad interpretation of the “complex product” concept in order to provide an adequate protection to retail investors, resulting in a situation where almost every product offered has a complex attribute which makes them unsuitable for this client category. We also believe the cost & charges requirements in MiFID II has created a barrier to entry. The rules require firms to obtain data from third parties which are not subject to the MiFID II rules. In case not reliable data could be obtained, many investment firms stopped distributing the products – to the detriment of clients. Moreover, the current interpretation of the PRIIPs requirements has led many manufacturers to restrict products to professional investors e.g. corporate bonds. This has created a barrier for retail investors which no longer have access to these products. Moreover, the current drafting of the opt-up possibilities in annex II makes it very difficult for even sophisticated investors to opt-up to professional investors in order to buy those products.

	The above reality contravenes the CMU intention to foster retail investments into capital markets and, accordingly, the Commission purpose to improve the direct access to simple investment products by retail investors.
Question 6.1 Please explain your answer to question 6:	-

Section 2. Specific questions on the existing regulatory framework

PART ONE: PRIORITY AREAS FOR REVIEW

I. The establishment of an EU consolidated tape

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

Lack of financial incentives for the running a CT	3
Overly strict regulatory requirements for providing a CT	
Competition by non-regulated entities such as data vendors	3
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?

Question 7.1 Please explain your answers to question 7:	EBF Members views are split on the need for a CT. Also, many members have expressed that is difficult to have a firm position on the CT as it is still so clear which features it will have. If the EC decided to introduce a CT, the EBF would generally expect such CT to provide market participants with data based on common data standards of good quality. We would then support a robust governance put in place to rule the CTP but without mandatory consumption of any data. The EBF is particularly attentive to the cost entailed and to the benefits that a CT may grant to financial markets users. The EBF would expect the CT not to increase data cost, as the latter have already drastically increased since the entry into force of MIFID 2. Still in the hypothesis that EC would consider going ahead with a CTP, having regards to the scope of instuments, some members would favor a wide scope, while others a narrower one. The EBF would suggest to take a phase-in approach and to start with post trade equity data first. Because of the lack of consistency, derivatives cannot be in the scope. The EBF is commited to continue reflecting on this topic and to contribute to the debate as long as the discussion evolves.
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 (Regulat ion (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated tape framework? Please explain your answer:	

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns? **Please explain your answer:**	More specifically, it has to be noted that the provisions on “market data (charged) on the basis of costs" (2nd bullet point above) proved (over time) not to be effective in achieving its goal (at least so far) and, in this scope, we would welcome a far more detailed regulation (as mentioned in the 3rd point) might be needed in order to require exchanges to amend their fee calculation in a way that explicates the actual “cost” of (producing) the data to be provided, and requires to display any other cost items which concur and add to the baseline-cost (the so-called "costs plus" approach). Such level of detail might be introduced by the newly amended Regulation (as per bullet points above), along with a detailed framework specifying what costs’ items could be allowed or not allowed within the calculation of the final market data cost

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

Transaction cost analysis (TCA)	3
Ensuring best execution	3
Documenting best execution	3
Better control of order & execution management	3
Regulatory reporting requirements	3
Market surveillance	3
Liquidity risk management	3
Making market data accessible	3
at a reasonable cost	3
Identify available liquidity	3
Portfolio valuation	3
Other	-

Please specify what are the other use cases for an EU consolidated tape that you identified?	A Meaningful answer would have to refer to the concrete design of the CT. The following fundamental aspects would have to be taken into account, such as: Does the CT make the data available in real time or at the end of the day? Is it pre or post-trade

	transparency data? How are the interfaces designed? These and other aspects would have to be known in order to answer Q10 in a meaningful way.

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

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

Feature	Rating
High level of data quality	5
Mandatory contributions	4
Mandatory consumption	1
Full coverage	5
Very high coverage (not lower than 90% of the market)	5
Real-time (minimum standards on latency)	4
The existence of an order protection rule	3
Single provider per asset class	3
Strong governance framework	5
Other	-

Please specify what other feature(s) you consider important for the creation of an EU consolidated tape?	If the EC decided to introduce a CT, the EBF would generally expect such CT to provide market participants with data based on common data standards of good quality. We would then support a robust governance put in place to rule the CTP but without mandatory consumption of any data. The EBF is particularly attentive to the cost entailed and to the benefits that a CT may grant to financial markets users. The EBF

	would expect the CT not to increase data cost, as the latter have already drastically increased since the entry into force of MIFID 2. Still in the hypothesis that EC would consider going ahead with a CTP, having regards to the scope of instuments, some members would favor a wide scope, while others a narrower one. The EBF would suggest to take a phase-in approach and to start with post trade equity data first. Because of the lack of consistency, derivatives cannot be in the scope. The EBF is commited to continue reflecting on this topic and to contribute to the debate as long as the discussion evolves.
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):	
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:**	We would not support a mandatory consumption, as it would certainly increase costs on investment firms. However, as this topic was one of those EBF members had diverging views on, we would suggest to refer to National banking associations positions on this topic

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):

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

The CT should be funded on the basis of user fees	3
Fees should be differentiated according to type of use	3
Revenue should be redistributed among contributing venues	3
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	3
The position of CTP should be put up for tender every 5-7 years	3
Other	-

Please specify what other important feature(s) for the funding and governance of the CT you did identify?

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

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

Shares pre-trade3	3
Shares post-trade	5
ETFs pre-trade	3
ETFs post-trade	3
Corporate bonds pre-trade	3
Corporate bonds post-trade	3
Government bonds pre-trade	3
Government bonds post-trade	3
Interest rate swaps pre-trade	1
Interest rate swaps post-trade	1
Credit default swaps pre-trade	1
Credit default swaps post-trade	1
Other	1

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

If a CTP would be decided by colegislators, a phased-in approach would be necessary in order to avoid high implementation costs without any benefits. The scope should be limited to post-trade data for shares admitted to trading on a regulated market.

Question 15.1 Please explain your answers to question 15:	
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:**	At this stage, only post trade date on shares should be included. EBF would only support a phase in approach., see Q 15

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

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

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?	
Question 17.1 Please explain your answers to question 17:	If a CTP would be set up, we are in favour of including “Shares” in the scope of the CTP and we consider appropriate, in this specific context, to limit it to “Shares admitted to trading on a RM.

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:

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:

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:

We do not agree that a CT is necessary. If the legislator decides to mandate a CT, it should be restricted to post-trade data for shares admitted to trading on a regulated market.

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:

We believe the STO should be recalibrated. At least, it should focus its application on shares with primary listing in the EU. The discussion about the trading of Swiss shares and the impact of the Brexit on trading has clearly shown that investors' need to access the most liquid markets must be taken into account. Having the CMU in mind, this applies especially to institutional investors such as insurance companies or funds. Moreover, overlapping scopes with third countries must be avoided. We expect that EU shares will continue to be listed on UK trading venues. For banks operating in the EU and in the UK this would lead to conflicting rules that cannot be resolved. The best way to identify shares subject to the STO would be the ISIN-approach along with the

currency. We should also ensure that shares issued by third-country issuers and shares simultaneously admitted to trading in the EU and in a 3rd country at the request of the issuer are excluded from its scope. Concerning dual listings we have experienced contradictory situations with the Swiss measures (e.g. ABB listed in Stock-holm and on SIX or Lafarge listed on SIX and Paris Euronext). While the majority of liquidity for these particular examples sits outside the EU, the current EU STO requires firms to execute those transactions on EU trading venues. Firms should be able to comply with the obligation by trading on either the EU Exchange and/or the foreign primary market.

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?

2

Question 22.1 Please explain your answer to question 22:

We believe there is not sufficient clarity on the scope of the STO regarding the shares not (or not only) admitted to an EU regulated market or EU MTF. Simplification is definitely necessary to achieve more clarity and compliance to STO requirements.

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

Maintain the STO (status quo)	2
Maintain the STO with adjustments (please specify)	4
Repeal the STO altogether	3

Question 23.1 Please explain your answers to question 23:

We believe there is not sufficient clarity on the scope of the STO regarding the shares not (or not only) admitted to an EU regulated market or EU MTF. Simplification is definitely necessary to achieve more clarity and compliance to STO requirements. We should also highlight that some of our members are in favour of repealing the STO altogether.

EBF strongly supports to keep the Systematic internalisers as eligible venue. It is important for EU to have different types of execution venues acting in competition.

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?

SIs should keep the same current status under the STO	5
SIs should no longer be eligible execution venues under the STO	1
Other	-

Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:

We don't think the status of systematic internalisers as eligible venues should be revisited.

Question 24.1 Please explain your answers to question 24:

We believe that SI should keep the current status, also in terms of eligible venues for compliance with the STO. The exclusion of SI from the list of eligible execution venues would make STO requirement more difficult to be fulfilled as the number of eligible execution venues would be narrowed.

If SIs loose their current status as eligible execution venues, it would lead to very high concentration of trading on regulated markets which would strengthen even further their dominant position. That is not in line with MiFID II objectives on competition between different types of venues. All issues relating to cost of market data must be solved before any changes can be made

We are broadly satisfied with the current regulatory framework, which was already revised with MIFID II.

However,

1. It would be useful, and in the interest of every stakeholder, to simplify the computational criterion for the thresholds necessary to understand whether an investment firm qualifies as Systematic Internaliser.
2. It would be largely appreciated to have a refinement of the obligation to operate as Systematic Internaliser on an entire sub-asset class when the investment firm qualifies as SI on one specific financial instrument (belonging to that sub-asset class). We understand the reasoning for such requirement (i.e. avoiding the so-called cherry-picking), but in certain circumstances it has proven to be an excessive burden, especially in the bonds market.
3. Finally, we believe that the various parts of regulatory framework which aim to qualify the financial instruments that can be subject to the SI regime should be revisited in order to make them (definitely) clear. Indeed, at the current stage investment firms need to combine together a number of regulatory provisions to work out whether a given instrument or class-of-instruments is to be considered in/out of scope and, in some of cases, there is no certainty about the correctness of such final valuation. The framework is complex and it would be appropriate to revisit it in a way that consolidates together (and hence explicates) the classes of instruments being in-scope and those being out-scope, without leaving (as it is currently provided for) such onus on the Investment Firms. And this is specifically true for the case of financial instruments which are not traded on a trading venue.

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:

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:

As it the case for a number of legislative frameworks, steps aimed at fostering level-playing field(s) are always welcome. However, should the European Union colegislators take into consideration the initiative to intervene for Sis, then it is of paramount importance to recall that Systematic Internalisers do take on risk in their daily operations, by operating on own account and exposing their own capital, representing an important extra-source of liquidity for market participants (i.e. liquidity providers). Consequently, any eventual amendment of the legislation in this scope it will have to be “meaningful”, avoiding that Sis take on extra undue risks. The way of trading is fundamentally different and cannot be aligned by pre-trade transparency issues or any other means.

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading? **Please explain your answer:**	
Question 28. Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?	-
Question 28.1 Please explain your answer to question 28:	
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?	
Question 29.1 Please explain your answer to question 29:	

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?

Abolition of post-trade transparency deferrals	1
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	4
Keeping the current regime	2
Other	-

Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?	The EBF understands that a creation of a CT for non-equity would necessitate first of all an harmonization of the deferral regime, which was subject to NCAs discretion. However, it is important to ensure that the deferral is sufficiently long in order to protect SIs against undue risk.
Question 30.1 Please explain your answer to question 30:	

II. Investor protection

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

The EU intervention has been successful in achieving or progressing towards more investor protection.	3
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	2
The different components of the framework operate well together to achieve more investor protection.	2
More investor protection corresponds with the needs and problems in EU financial markets.	3

The investor protection rules in MiFID II/MiFIR have provided EU added value.	3

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.

Estimate (in €)

Benefits	NA
Costs	NA

Qualitative elements for question 31.1:

The implementation of MIFID/MIFIR has meant more information for investors, it implies an increase in pre-contractual, contractual and post-contractual information.

This increase in information is excessive and redundant for clients in particular for those categorized as eligible counterparties and professionals who can take care of their own interests. Many retail clients find the information too complex and difficult to understand.

Effects on clients

The overall aim of MiFID II/MiFIR (increasing investor protection and transparency) is obviously the right objectives. But the regulatory intervention has only been partly successful in achieving more investor protection. Recent studies show that investors generally feel more annoyed or overwhelmed by the sheer amount of information that distributors provide. We would also like to highlight MiFID positive impact in the area of Product Governance it might have incentivised banks to have a deeper knowledge of their product offering, thus focussing more on cost efficiency. In the area of cost transparency, disclosures may have led to useful discussions with some clients but the general impression is that most clients do not read the information received either because they are not interested or because the information is considered too difficult to understand. We regret that there is no European Commission consumer test that can

underline both the negative and positive effects of MiFID II in the area of investor protection, in particular as regards information requirements.

Timelines and guidance

Whilst level 1 legislation has been rather clear, level 2 and especially level 3 legislation has proven to be 'too little too late' and multi-interpretable. First, clarification of the legislation was limited in the initial phase of MiFID II. When clarification (for example in the form of level 3/Q&A's) came, it was too late as financial market participants already implemented new procedures and/or systems (after all, the directive became effective starting from 3rd of January 2018 already). Second, we have seen multiple interpretations of MiFID II / MiFIR by supervisors, as well as different supervisory practices. This has created legal uncertainty as well as a lot of IT and compliance costs.

Different regulatory components don't fit well together & cross sectoral alignment MiFID 2

The different components of the framework in some places do not work well together. Regarding the Product Governance regime (especially for non-complex instruments), setting up a distribution strategy based on different target markets might not be of added value in the case of advice- or portfolio management as far-reaching suitability requirements and (national) duty of care obligations are already in place. It is important to note that not only components within the framework do not align, but also outside of the MiFID II/MiFIR framework (for example regarding PRIIPs or UCITS). ESMA is aware of many discrepancies (for example in the case of cost transparency obligations and inducements) between frameworks, that are burdensome for firms and are counter the objective of better investor protection and transparency for (retail) clients. Furthermore, as in other areas, regultions should be aligned. In this respect, we note that PRIIPS and suitability knowledge and experience requirements relate to the contacting party, MiFID II target market rules to con***tr***acting party. This leads to problems, especially when ta power of attorney is a professional and the end client is retail, and the target market prevents retail sales. Under such conditions, PRIIPS and MiFID suitability knowledge and experience requirements would permit the trade, while

the MiFID II target market would not. Therefore, the client category status of the target market rules should also relate to the con*ta*cting party and not to the con*tra*cting party.

Cross sectoral alignment MiFID 2

The MiFID/Delegated Directive relates to investment services and in principle not to the offering/issuance of investment products. Only manufacturers are in scope that qualify as investment firms, meaning investment firms that produce an investment product and provides an investment service regarding to that same investment product. However, most investment products (shares, bonds and funds) are *not* manufactured by investment firms, but by companies that issue bonds/shares, such as UCITS and AIF's. Result is that most producers of investment products are not legally required to provide target market information, or information on transaction costs within the fund. This puts the burden on distributors to collect target market and cost information from the issuers of investment products, without the requirement for these issuers to provide the same information.

For some (mass retail and non-complex) investment products the distributor can derive the target market criteria from the type of the investment product, the exchanges where these products are listed/traded on and the regulatory mandatory disclosures such as the PRIIPS KID / UCITS KIID. This approach is however at the risk of the distributor.

Costs and benefits

Costs and benefits are not balanced regarding the regulatory burden. We believe clients are (and definitely, as studies show, feel) hardly more protected than before MiFID II implementation. If all costs (regarding IT changes, legal and compliance adjustments, operational and commercial considerations) are added up, it is hard to agree with a statement that costs and benefits are balanced in the case of MiFID II implementation.

Added value is almost impossible to measure. Some parts of the framework could be of added value for some clients (i.e. ex-post cost transparency overview or suitability in portfolio management). As neither the ESA's nor the Commission has conducted very broad consumer testing in the area of MiFID II, the real added value is still to be demonstrated.

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?

Requirement	Answer
Product and governance requirements	Yes
Costs and charges requirements	Yes
Conduct requirements	NO
Other	NO

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

Question 32.1 Please explain your answer to question 32:

Product governance rules should be simplified for non-complex products and should not apply in respect of products provided to only eligible counterparties and professional clients.

Given the characteristics of some non-complex financial instruments, (ordinary shares, investment funds (UCITS) or bonds traded in secondary markets) Product Governance must applied in a more proportionate way:

- No need to include negative target market: Ordinary shares are not 'manufactured' by the issuer and are not issued for a designated target market. As a base case, ordinary shares are deemed eligible for all distribution channels. The Commission should revise recital 15 of the delegated directive.

This is in line with ESMA statement on its Final Report on MiFID II (2014/1569) "For simpler, more mainstream investments, such as ordinary shares, it is likely that the target market will be identified with less detail. In many cases, it is understood that such products can be considered to be compatible with the mass retail market in addition to sales to investors who meet the criteria of professional clients and eligible counterparties".

- The product governance requirement related to the periodic review of the financial instrument is designed to ensure does not impair benefits for final clients as shares do not change their structure.

Costs and charges requirements and information obligations should be simplified according to greater proportionality. More detail provided in relevant questions.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?	4
Question 33.1 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:	We understand that the general MIFID 2/MIFIR framework provides adequate protection for retail investors. It is important that MiFID Review does not result in more detailed rules but leads to a simplification of the investor protection rules. However, level 2 and especially level 3 MiFID II legislation has proven to be not so clear as the level 1, with the consequence of being multi-interpretable. Moreover, many issues are totally unclarified at EU level, thus allowing different implementation and sometimes also different supervisory approaches by the NVCA; in certain cases national authorities have developed additional investor protection requirements in accordance with article 24.12 of MIFID 2.
Question 33.1 Please explain your answer to question 33:	

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?

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

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

ECPs and professional clients should be directly exempted from receiving ex ante information for the following main reasons: (i) there´s an almost perfect symmetry in terms of information on financial markets, which implies that all professional per se clients and ECPs have in fact the same level of information that they are receiving; and (ii) related to the above, professional clients and ECPs do not even match a "client" categorization since selling entities have an equal-to-equal relationship with them. iii) in trading business with professional clients and eligible counterparties, complying with ex-ante transaction-based costs and charges disclosures is almost impossible in some circumstances. In particular, in case of electronically traded products or business conducted over on-line venues and platforms (where eligible counterparties and professional clients request execution on an agreed final price) no technical means to make individualised and transaction-based disclosure are possible, also taking into account that the time between a trade request by a client (through online platform or by phone) and the trade execution is very short

There should be no distinction between per se professionals and clients which have opted-in as professionals according to annex II of MiFID II.

The same considerations justify the extension of the proposed exemption also to retail clients using trading extensively not only online, but also via phone. Execution speed is crucial to these clients and they have the necessary experience to understand trading costs and charges.

We are aware that our proposal goes beyond what has been indicated in the latest ESMA Report on Inducement and Cost and Charge Disclosure under MiFID II issued on March 31, while noting that the regime works generally well for retail clients, ESMA called for more flexibility on the regime covering disclosures on costs and charges for professional clients and eligible counterparties, recommending the possibility for these categories of clients to opt-out, under certain circumstances and, subject to documentary burdens, to opt-out in full or in part (ref. p. 108-116, and the related technical advices). The EBF welcomes that ESMA has identified this problem and proposes action. However, as mentioned above, we prefer exemption for ECP and professional clients. The reason why we believe necessary to avoid the option regarding unilateral opt-out out by ECP and professional clients to ex-ante disclosure is because of the adding procedural and organizational efforts this would imply for intermediaries.

When it comes to retail and professional on request clients, the possibility to opt-out from ex-ante information obligations should be made possible if the bank decides to offer the exemption.

In addition to the above, a general decrease of the required amount of information would be beneficial also for retail investors, since the current amount of information clients receive is inefficient and contrary to the European Commission's objective that the client information should be "short, simple, comparable and thereby easy to understand for investors".

To reduce execution delays, retail clients should, in case of distant communication, be able to request that the cost information can be provided after the transaction is executed (similar to the requirements for handing out the suitability report and PRIIPS

KID post-trade). Moreover, a comprehensive one-off cost transparency document which is not handed out on a trade by trade basis (but before rendering the service on a one-off basis) should be a valid alternative for retail clients.

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

Professional clients and ECPs

MiFID II has introduced a broad reporting and cost disclosure obligation. As the Commission has mentioned in their CP, '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 both retail, professional and eligible clients alike'.

A 'MiFIDII/MiFIR/PRIIPS Regulation Impact study'1 showed clients, professional more than retail clients, would like to have a choice of waiving -ex ante cost disclosure. The more experienced the client (retail or professional), the more they felt bothered or annoyed by the mandatory information. Professional clients show no interest in detailed costs information, because they generally tend to be interested in the aggregated cost figure. Cost disclosure might in cases be of (some) value towards retail clients but not necessary in a professional secondary bond market. The cost disclosure seems artificial, takes a lot of costs and effort, while professional clients have no interest in it.

The EBF is aware of the possible solution provided in Article 50 (1) of the Commission Delegated Regulation (EU) 2017/565, but the article doesn't provide a general solution of a full waiver for ECP professional clients. To attract professional clients to the investment market professional clients and ECP should be exempt from investor protection rules, or we would strongly advocate an opt-out possibility. There should be no distinction between per se professionals and clients which have opted-in as professionals according to annex II.

[1]https://www.bvr.de/Press/Press_releases/MiFID_II_is_driving_customers_away_from_the_capital_markets

Retail clients

Please see our answers in the section 5 ‘distance communication’ and our answer to questions 32.1.1.

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

5

Question 35.1 Please explain your answer to question 35:

Following the initiatives on environmental responsibility, we consider that it would be a good time to introduce measures intended to reduce paper consumption. Thus, for most clients, email or other durable mediums are the primary medium for regular communication in line with the sustainability objectives of the European Union.

In addition:

- The reduction of paper-based information would result in cost-savings for investment firms.
- It would grant access to information even on extraordinary situations (such as the coronavirus epidemic).
- It would grant access to the most updated information on an ongoing basis.
- It is important that local supervisors admit that proof of delivery can be provided in this way.

We propose therefore that specific consent for the delivery of the information in a durable medium other than paper should not be a requirement. Thus, paper should not be the default option. Please, note that this is the approach already taken by the European Legislator in other Directives, such as IORP II, where investor protection is as important as on MiFID II.

In this regard, p. 193 of the ESMA report on Inducement and Cost and Charge Disclosure under MiFID II provide further recommendations saying, inter alia, that “when information

	must be provided in a durable medium, the provision of such information by means of electronic communications shall become the default option and should not require an active choice of the client, provided, however, that the client has provided the firm with a valid email address. We believe that this approach would not reduce the protection afforded to the client as the presumption set forth in article 3 of Delegated Regulation 2017/565 of 25 April 2016 supplementing MIFID 2 would still apply (i.e. the provision by the client of an e-mail address for the purpose of the carrying on of the business between the firm and the client will be treated as an evidence that the client has regular access to internet). We would like to stress that in order for the aforementioned approach to work and fulfill its intended purpose (i.e. phase-out of paper based information), any changes in the MIFID 2 framework should be accompanied by changes in this regard in the PRIIPs Regulation.

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

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

Please specify in which other way could a phase-out of paper-based information be implemented?	Retail clients that provided a valid e-mail address for information purposes should be considered as being able for receiving information in a durable medium other than paper.

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:	A crucial aspect to ensure that the phase-out is completed properly is the provision of sufficient time for entities to adapt their internal systems. In this sense, it would be beneficial the establishment of a transitional period where entities could choose between the provision or not of paper-based information
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
Question 37.1 Please explain your answer to question 37:	The EBF does not support the development of such EU data base, as: • it would determine high costs for manufacturers in order to provide the relevant administrator with the KIDs/KIIDs/prospectuses or other documents/information and any updated version. In this case the EU data base would result for manufacturers in a new heavy obligation overlapping with those already provided for by relevant national regime applicable to KID/KIID/prospectus. It is therefore evident that such approach would be not desirable. Since all these documents are already available online, this data base could be implemented without any further activity required by Manufacturers; • it would have limited value for clients considered that the relevant precontractual documentation (KID/KIID/prospectus) provides only the maximum admitted costs (which can differ from those concretely applied consistently to the commission brakes applicable by intermediaries), and it does not include the costs of the relevant services provided by intermediaries.

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

All transferable securities	1

All products that have a PRIIPs KID/ UICTS KIID	1
Only PRIIPs	1
Other	-
Please specify what other products should be prioritised?	
Question 38.1 Please explain your answer to question 38:	
Question 39. Do you agree that ESMA would be well placed to develop such a tool?	1
Question 39.1 Please explain your answer to question 39:	
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?	5
Question 40.1 Please explain your answer to question 40:	We consider that MIFID 2/MIFIR can be overly protective for certain retail clients who have sufficient experience with financial markets. This can restrict the services and products that can be made available to these sophisticated clients, which is not only detrimental to the client's long-term investment goals, but also to the goals of the² EU's Capital Markets Union and encouraging more investment in capital markets, by unlocking investment potential by allowing sophisticated investors to invest into further asset classes similar to professional investors. Thus, we believe that there are existing

barriers to sophisticated retail clients to access certain financial instruments as they do not fulfill the requirements to become elective professionals

However, we do not agree that it is necessary to create a fourth category of 'semi-professional' client which would result in too many significant changes to MiFID II. Instead, it would be preferable to refine the opt-up criteria that apply when a retail client elects to opt-up to professional status (and, in so-doing, foregoes the additional protections that apply to retail investors). The key to doing this successfully is to make the criteria more practical and easier to apply to a wider range of top-end sophisticated clients, SMEs and newly constituted companies, while maintaining the higher investor protection for the bulk of the retail class.

As of today, MiFID Rules on professional at request categorization, implies on one hand that clients with enough experience on financial markets cannot opt for such classification and thus cannot operate in relevant financial instruments (e.g. OTC derivatives or corporate bonds for with the requirement of 10 transactions in the last quarter is too restricted and not to many other longer term asset classes, such as private equity, infrastructure and ELTIFs etc. where investment is made much less frequently). We are on the view that the necessary experience should be different for each type on financial product. Furthermore, a narrow application of the criteria on an asset-class by asset-class basis is in contrast to the portfolio management approach, which requires to consider the entire portfolio of a client rather than an isolated financial instrument view only.

In addition, it would be very important to clarify the concept of “financial sector which requires knowledge of the transactions or services envisaged”. Does it mean that the client or the legal representative or the person who takes the investment decisions in a company has worked in the financial industry (banks, fund management companies, etc)? Or does it have a broader interpretation, including for example, financial departments of any kind of company?

We believe the definition of professional client in annex II should be revised taking into account various criteria and distinguishing between products. A number of criteria may

be considered such as the client's portfolio of financial instruments and the amount of his investable assets couple with relevant knowledge and experience, the level of knowledge of the client for the transactions or services envisaged.

In general, we believe that MiFID II/MiFIR can be overly protective for all clients, not only for those who possess sufficient experience. Less sophisticated clients could be overwhelmed by the overload of information. We therefore don't believe that any changes to the classification rules can solve the issue of 'overprotection' in general. Only reducing the total amount of information could help all clients.

Besides cost information, suitability, and PRIIPs KID requirements we would like to stress the need for adjusting loss-reporting obligations under MiFID II.

Loss reporting

Loss reporting, as laid down in Article 62 of MiFID II DR, means that a >10% depreciation of the overall value of a client's portfolio or on a product level, in one business day should be reported to the end client. This is a post-sale reporting obligation for banks.

First, this obligation is confusing for clients who trade in derivatives or leveraged structured products. These clients generally have a relatively high level of knowledge and experience and know that in one business day, there could be high fluctuations in the value of these products. For example, they will be notified on a daily basis regarding the deprecation on multiple products, and also on their overall portfolio. Second, the notification might incentivise clients to conduct a trade, whilst it might not be wise to trade (i.e. this notification can be seen as a disguised investment advice to sell when markets depreciate). Third, even as depreciation notification on portfolio level makes more sense than on product level, it still isn't useful for every client as every client has their own preferences and risk appetite (i.e. not for active traders, but neither for some rather passive buy-and-hold investors).

Advice

	Delete second paragraph of Art. 62, Commission Delegated Regulation (EU) 2017/565. If this is not acceptable, we need to have to possibility that the client can opt-out.
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?	2
Question 41.1 Please explain your answer to question 41:	We consider it a higher priority to make the criteria customer's experience criteria more flexible than the threshold requirement in this question.
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
Question 42.1 Please explain your answer to question 42:	Currently MiFID II/MiFIR provides two legal categories of clients: retail and professional clients. In reality of course, there are many types of clients that are arguably not professional clients, but, have a high level of experience and knowledge of financial markets and products. These retail clients feel overprotected and receive an overload of information that they do not prefer to receive. Some stakeholders indicate that the creation of an additional client category ('semi-pro' or 'high net worth individuals') could be constructed to solve the above issue. We disagree with the possible creation of an additional category of clients. First of all, the definition and determination of such a category is highly debatable. For example, what retail clients could be included in such a semi-prof category, ones with high wealth, high knowledge, or only if they possess both? Retail clients could be incentivised to become included in such a category, which could be seen as a negative side-effect of creating such a category. Second, the burden of implementation to create an additional category is very high as it means (another) big shift in legal and IT

systems (i.e. Product Governance) and comes with a complete Suitability reassessment of all current clients as well.

In line with ESMA, we consider that “it is not appropriate to create a new category of clients – sophisticated retail clients - under MiFID II for the purposes of the inducements regime.”

If the option of creating a new retail category is decided, grandfathering should be provided in respect to existing categories and, in particular, the elective professional status should be maintained; this new category should be voluntary, so that entities could have the possibility to activate it or not depending on their specific client situation.

Advice

We believe a better solution to the information overload to these clients can be found in reducing the overall amount of compulsory information to all clients (including ones with high wealth / high knowledge), by means of an opt-out possibility for 1) the KID, 2) cost information and 3) suitability statements.

A new semi-professional category is, in line with ESMA’s opinion, not desirable.

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

Suitability or appropriateness test	4
Information provided on costs and charges	4
Product governance	4
Other	-

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?	
Question 43.1 Please explain your answer to question 43:	As referred in questions 41 and 42, we do not consider it advisable or beneficial to create a new category of client, but we do ask that the experience criteria for access to the category of professional on request be made more flexible. If the above is not considered, the aspects that should be made more flexible are those relating to product governance (Q32.1) cost and charges (view answers to question 34.1 (possible opt-out regime) for ex-ante information) and suitability/suitability assessment.
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:**	The creation of a new category of semiprofessional client would imply very high cost in order to modify our systems and distribution programs. For avoiding this we support the relax of the requirements for the professional clients at request.

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

Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	NA
Semi-professional clients should be identified by a stricter financial knowledge test.	NA

Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	NA
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.	NA
Other	-

Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:	Please refer to our answer to question 42.1.

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:	In line with the answers given above, we do not consider it advisable to create a new category of professional customers It would be enough to assess whether the client´s knowledge and trading experience reasonable grants, in the view of the nature of the intended transactions or services, that the client is able to adopt its own investment decisions and understand the risk involved. We also believe there could even be incentives for retail clients to move towards the criteria of a semi-professional clients as the information overload might be lower in such a category.

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?	5

Question 46.1 Please explain your answer to question 46:	Product governance rules laid down by the MiFID II framework in general have had a positive impact on investor protection, but there are some flaws and remarks we would like to highlight. There´s a lack of balance between MiFID II requirements related to the provision of access to the widest range of suitable investment products for investors and the interpretation of the product governance rules by member states. This is especially relevant regarding complex products, since national competent authorities

tend to make a broad interpretation of the "complex product" concept in order to provide an adequate protection to retail investors, resulting in a situation where almost every product offered has a complex attribute which makes them unsuitable for this client category. The above reality contravenes the CMU intention to foster retail investments into capital markets and, accordingly, the Commission purpose to improve the direct access to simple investment products by retail investors.

Cross sectoral alignment

The target market criteria / ESG factors should be included in the regulatory framework applicable to the offeror/issuer of investment products (UCITS/AIFMD/Prospectus Regulation/etc.).

Easing the periodic review

Regarding simple financial products, we believe that a periodic review of non-complex products instruments as per the product governance requirements does not lead to additional benefits for clients and should therefore not be required (actually, the periodic review has no benefit in the case of simple instruments but does come with costs). We don't believe however that non-complex financial products like shares should be exempted from the overall product governance regime, as these simple products could be qualified by firms rather easily (i.e. as mass retail) and are used by many retail clients. The overall goal of Product Governance is providing the right clients with the right products, exempting a significant amount of 'products' does not lead to better investor protection in our view. Therefore, the issuers of these shares or bonds should also provide target market criteria.

Execution Only (EO)

The Commission should explicitly state that Product Governance requirements in the case of EO should be implemented proportionally, only taking into account information you actually receive from your client (type of client and knowledge and experience). A

	further granular view on different client categories (and subsequent preferences) is hardly possible nor desirable in an EO environment. **Feedback regime** Regarding the concerns that the Commission has expressed, we would like to add that the feedback regime (when selling inside a negative target market) is flawed, as product manufacturers are not subjected to the MiFID framework they have no obligation to (legally) co-operate in a 'feedback loop' between distributor and manufacturer. As mentioned before, we would like to see the Product Governance regime applicable to 1) manufacturers of funds (UCITS / AIF's) and 2) issuers of shares, bonds and other securities. Please also see our answer to question 48 regarding selling inside a negative target market.

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

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).	Yes
It should apply only to complex products.	NA
Other changes should be envisaged – please specify below.	Yes .
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	No
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	No
The regime is adequately calibrated and overall, correctly applied	No

Question 47.1 Please explain your answer to question 47:

In our opinion, in view of our response to Question 46, product governance rules should be simplified in respect of non-complex products and should not apply for professional clients *per se* and eligible counterparties.

Specifically, we request further clarification and modifications over the next issues:

- There´s a difficulty for distributors to comply with MiFID II requirements when offering or recommending financial instruments manufactured by entities that are not subject to MiFID II regulatory regime.

  We would then propose to narrow down the scope of target market requirements to exclude simple products such as shares and bonds (aligned scope with PRIIPS).
- Sells to negative target market should be possible as long as the client is warned about it, especially if the financial instruments results to be suitable or the client refuse to provide information on their investment needs and objectives.

- Product Governance and investment advice: the suitability assessment includes the analysis on the financial situation, objectives and needs of the clients in order to assess if the investment are suitable for the client. Generally speaking, the compatibility with the target market does not gives additional benefit to the client.

- Reverse enquiry: The product governance provisions should not apply when an investment firm receives a request for quote on a reverse enquiry basis. In these cases, the investment firm does not approach the client, conversely the initiative results exclusively from the client; thus this kind of activity requires great speed of response in a competitive tender situation, and firms may not have time to meet the whole process with the negative economic impact that this might entail..

- Definition of manufacturer: Clarification in respect of the definition of "manufacturer" would be appreciated in the following case: when the issuer of a particular security is an investment firm and the entity structuring the issuance is another investment firm.
- Derivatives concluded for hedging purposes: In our view, the current product governance regime does not properly address the fact that the same product may be used to meet different objectives/needs. In particular, in the case of derivatives that are concluded for hedging purposes, it does not make sense to consider the product on an independent basis as, in these cases, the particular circumstances surrounding the client are of special relevance
- Feedback. Target market feedback obligations are also unnecessary burdensome as they are currently drafted.

We strongly request a more simplification of the requirements and more concrete and rules.

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

Question 48.1 Please explain your answer to question 48:

In those cases where an investment firm **(a)** has completely fulfilled its legal obligations in respect of the service provided (pre-trade information, management of conflicts of interest, etc.); and **(b)** the client completely understands the characteristics and risks of the product, the firm should be allowed to sell the product in a negative target market if

	the client insists. We believe that the current regime approved by ESMA in its Guidelines on product governance should be maintained in this respect.
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
Question 49.1 Please explain your answer to question 49:	It is important to move forward on the harmonization of the supervisory authorities criteria since they vary substantially from one country to another. We are particularly concerned about the consideration of inducements for placing investment service payments. Although firms should assess all payments or benefits received against the inducement rules, in the specific context of a firm providing placing services to an issuer, and also distributing new financial instruments to investment clients, we believe that the fees received by the firm from the issuer client directly relate to the provision of a MIFID investment service. Regarding these payments, conflicts of interest rules will apply, including the need to identify and manage potential conflicts between the interests of different groups of clients or different activities that the firm carries out.
Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?	1
Question 50.1 Please explain your answer to question 50:	Intermediaries have implemented a set of calibrated measures which in these two years of MIFID II adoption have adequately ensured that inducements do not affect the obligation to act in the best interests of their clients. This set of measures is composed of

mechanisms operating at many levels and it is properly coordinated with other relevant conduct rules (i.e. conflict of interests, product governance, suitability assessment).

We should recall the ESMA Report on Inducement and Cost and Charge Disclosure under MiFID II.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.

Investment firms have Policies on inducements and on conflicts of interest as well. All inducements are disclosed to clients both in ex-ante and ex-post information. So the provisions included in MiFID II regulation are consisiten with the request to act in the best interest of their clients.

In our opinion, an outright ban on inducements would reduce the range of instruments accessible for clients. A substantial tightening of the existing legal framework would mean the end of the widespread provision of investment advice. Large sections of the population, particularly retail investors, would have no access in future to qualified investment advice.

Retail investors in particular are unable or unwilling to pay the high fixed costs associated with fee-based advice or fee -based services. This is shown by the still very low demand for independent (fee-based) investment advice even when it is clearly available after MIFID II. Ultimately, there is the danger that investment advice may no longer be available as a service to many investors.

Clients who cannot afford fee-based services would likely have access to a very limited range of products or be limited to a few standardized products. Any tightening of the existing legal framework would ultimately mean that the provision of services in the single European financial market would be seriously restricted. This could mean the exclusion from financial support to a lot of clients, when there is no such a need since the current regime is working (it allows the financial entities to dedicate resources to the offer of an

important range of products, to provide relevant information to the clients, etc. while giving added value tools, when applicable, and, in any case, full disclosure).

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

1

Question 51.1 Please explain your answer to question 51:

Nowadays, there is already an appropriate qualification requirement for persons giving investment advice or information about financial instruments, investment services or ancillary services to clients.

If the training process includes practical cases, the minimum experience requirement should be exempted since a robust training is enough.

We hardly see a rationale for a certification requirement as ESMA Guidelines on Knowledge and Experience already require that:

- intermediaries ensure that staff providing relevant services to clients are assessed through the successful completion of an appropriate qualification;
- National Competent Authorities publish a list of the specific appropriate qualifications that meet the criteria of the guidelines or, alternatively the criteria and the characteristics that an appropriate qualification needs to meet in order to comply with those criteria.

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

1

Question 52.1 Please explain your answer to question 52:

See reponse to question 51.1

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?

5

Question 53.1 Please explain your answer to question 53:

The inherent character of distance communication trading demands a flexible regulatory regime in certain aspects such as *ex ante* information requirements. It should be recognized that both following alternatives should be admitted:

- as a general principle (not an exception) that in the context of distance communication, the provision of information in good time implies the provision of the pre-contractual documents right after the transaction is executed

- in case of telephonic trading, being the transaction/order parameters exchanged between client and investment firm through recorded phone call, it should be admitted that the ex-ante cost disclosure be provided through the same mean of communication (i.e. through the recorded telephone conversation), thus considering the recorded copy of the registration available at the client's request as a durable medium.

Telephone trading is for some clients still the main way to operate on the financial markets. Clients who access to our execution phone service, are clients that are fully aware of the financial markets characteristics and seek for an efficient and agile way of interacting with the market because in the moment of the call, they can´t use a web broker service tool. Moreover they fully understand that spending time in receiving information that they know or can easily obtained in our platforms (because costs in general are published in our web, can be agreed before the execution call, the specific amount can be checked on the confirmation details and they are clients that use the service regularly) can only end up in losing market opportunities or claims about delay in market execution price.

	As EBF have stated before, clarifications provided by the ESMA Q&A No 28 do not properly meet the needs and peculiarity of the telephone trading. In line with ESMA, we believe, with respect to the provision of ex-ante costs disclosures in case of telephone trading, with the PRIIPS Regulation and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services should be aligned with the MiFID II requirements in Art. 25 par. 6 MiFID II and the suitability statement.. As such, MiFID II should provide that, where a transaction is carried out by telephone at the request of the client and it is not possible to provide the ex-ante costs disclosures in good time before the transaction, the relevant costs disclosures may be provided immediately after the transaction is concluded. **Advice** Instead we confirm: • Opt-out possibility for KID, ex-ante cost disclosure and Suitability in the case of telephone trading; Amend Art. 50 of the Commission Delegated Regulation (EU) 2017/565 adding a specific provision focused on the ex-ante disclosure to be provided in case of telephone orders.
Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?	3

Question 54.1 Please explain your answer to question 54:	We believe taping and record-keeping requirements are useful tools to reduce the risks of liability (both from a client as from a distributors perspective). No amendments are necessary in our view with regards to taping and record-keeping requirements.
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?	2
Question 55.1 Please explain your answer to question 55:	We believe RTS 27 reports are not currently very useful to investors, mainly because of the following reasons: - Data quality is not good enough, especially if you consider it in terms of usefulness to investors This consideration is based on the evidence that the figures therein displayed do not translate into easily understandable terms for investors. - Reporting formats from the investment firms differ from one each other making it difficult to compare the data among them. From the investor´s point of view, only data information on 5 top venues seems to be relevant. The rest of data (% on passive or aggressive orders…..) is probably not very helpful for investors. However written information on the way the investment firm achieve its goals could help them to understand whether the global level of execution quality is correct or not. Refining and integrating such reports will have to be carefully thought over along with the industry (i.e. public consultations), so that any new revised version of BE Reports will result being (really) well-balanced in terms of cost of (and time taken for) their computation and production, versus the (real) benefits and usefulness for investors.

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

Comprehensiveness	4
Format of the data	2
Quality of data	4
Other	-

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

The current reporting based on RTS 28 does in our opinion no benefit the Best Execution of investor's transactions given the technicality and the little added value of this aggregated reporting while including a cost and operational burden for investment firms.

In an ideal world, monitoring the frequency of access by clients to the best execution reports produced by investment firms could provide some (indirect) guidance as to the type the clients and the elements that could be improved within such reports to make them more readable, understandable and all-in-all useful. But such monitoring of the access to the reports would likely be very costly and burdensome to structure and deploy into production.

The best execution reports due by Investment Firms (Delegated Regulation EU 576/2017) could be simplified by (i) **reducing** the number of Asset Class(es) and Sub-Asset Class(es) present therein and asked (removing be spoke instrument for example), and by (ii) **providing more clear** information as to the financial instruments to map to each asset/sub-asset class (iii) **reducing** the scope of the reports only to executed trades. However, improvement in terms of efficiency (which needed and would be welcomed) will have to be weighed against the costs to be born by IFs to achieve such major efficiency (hence, cost will have to be reasonable, not overcoming the benefits)

Finally, we would like to point out that investment firms have made significant investments in technology and adaptations of their systems and processes in order to comply with RTS 27 and RTS 28. Therefore, while we believe that the current regime could be simplified, any changes to the requirements in place should be carefully

	assessed and calibrated to ensure that they do not impose significant additional costs on firms.
Question 56.1 Please explain your answer to question 56:	
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?	2
Question 57.1 Please explain your answer to question 57:	The benefit to customers does not justify the cost of these requirements. Regarding: - RTS 28: This is a report that shows that the entity complies with its order execution policy without providing really useful information to clients. - RTS 27: We believe currently best execution reports are not being used by investors for the purposes that they have been designed. In line with our responses to questions 55 and 56, before taking any further step, the European Commission should carry out a cost-benefit analysis of RTS 27 and 28 and engage with market participants to determine whether these RTS continue being fit for purpose.

III. Research unbundling rules and SME research coverage

Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?	The EBF assessment of the effect of unbundling is negative. As an overall overview of the situation, the reduction in the price of research has led to a considerable fall in the research offer. This situation generates a negative impact specially from an investor protection perspective, since there are asset classes that do not have an adequate coverage, and this implies less visibility and information for investors. On the one side, the sharp fall in prices of research has triggered a substantial reduction in the overall capacity of the sector as can be seen in the sharp reduction in the number of analysts covering every single company in Europe. This even more marked in the small and mid-cap space. In our view, it is not only a matter of quantity but of quality as well since the worsening economics of the industry has provoked a serious 'junioriazation' of the research teams and many senior, very experienced analysts exiting the business which impact the quality of the coverage. Companies, not only mid and small caps, but more and more blue chips are very concerned with this development, having less and worsening coverage of their stocks. As a consequence, diversity in research has disappeared because the number of research teams has reduced significantly. Therefore, the risk of an oligopoly is the highest in history.

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

Introduce a specific definition of research in MiFID II level 1	1
Authorise bundling for SME research exclusively	3
Exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	1
Prevent underpricing in research	2
Amend rules on free trial periods of research	
Other	

Question	Answer
Please specify what other proposals you would have in order to increase the production of SME research:	We would like to point out that there is a general funding issue regarding research for SME research in particular. We support a revision of the scope of Article 13 by authorising bundling exclusively for providers of SME research.
Question 59.1 Please explain your answer to question 59 and in particular if you believe preventing underpricing in research and amending rules on free trial periods of research are relevant:	These measures would not promote the production of more and better research on SME.
Question 60. Do you consider that a program set up by a market operator to finance SME research would improve research coverage?	3
Question 60.1 If you do consider that a program set up by a market operator to finance SME research would improve research coverage, please specify under which conditions such a program could be implemented:	The existence of SME research or any type or size of equity research depends on economic incentives, not any other factor.
Question 60.1 Please explain your answer to question 60:	The existence of SME research or any type or size of equity research depends on economic incentives, not any other factor.
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:	If SME research would be subsidized, we could support partially public funding program, European funds in particular, as already done for other purposes in banking and financial sector, i.e. loans, bonds, public and private equity. However, we would like to stress that some our members believe that the demand for research should be mainly market driven.

Question 62. Do you agree that the use of artificial intelligence could help to foster the production of SME research?	3
Question 62.1 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?	
Question 62.1 Please explain your answer to question 62:	
Question 63. Do you agree that the creation of a public EU -wide SME research database would facilitate access to research material on SMEs?	3
Question 63.1 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:	We agree that the creation of a public EU-wide SME research data base would facilitate access to research material on SME's. The program should guarantee the independence of the research and shouldn't prevent the research producers to sell the researches their customers.
Question 63.1 Please explain your answer to question 63:	
Question 64. Do you agree that ESMA would be well placed to develop such a database?	3

Question 64.1 Please explain your answer to question 64:	
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?	4
Question 65.1 Please explain your answer to question 65:	Issuer-sponsored research existed prior to Mifid II. We observe in some European countries an increase of the production of this specific type of research in response to a greater demand for analyst coverage from issuers. We also observe that the use of issuer-sponsored research in Europe can be considered a market reaction to the changes to the research industry brought by MIFID II
Question 66. In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?	4
Question 66.1 Please explain your answer to question 66:	Based on existing regulation we consider that the issuer sponsored research could be qualified as investment research as defined in Art. 36 of EU Delegated Regulation, provided that is made clear in the research if there are financial links between the company and the research author. For the same purpose we consider needed that all the requirements included in article 36 and 37 of Regulation 565/2017 are fulfilled
Question 67. Do you consider that rules applicable to issuer-sponsored research should be amended?	3

Question 67.1 If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:	We consider that the rules introduced in the Article 12 of Delegated Directive (EU) 2017/593 regarding the qualification of an acceptable minor non-monetary benefit, already qualify the issuer sponsored research as acceptable minor non-monetary benefit, even if it would be useful to have a confirmation on some topics set by ESMA in Q&A on research inducements.
Question 67.1 Please explain your answer to question 67:	

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?

Introduce a specific definition of research in MiFID level 1	1
Authorise bundling for SME research exclusively	2
Amend Article 13 of delegated Directive 2017/593 to exclude independent research providers' research from Article 13 of delegated Directive 2017 /593	4
Prevent underpricing of research	4
Amend rules on free trial periods of research	1
Create a program to finance SME research set up by market operators	4
Fund SME research partially with public money	1
Promote research on SME produced by artificial intelligence	3
Create an EU-wide database on SME research	4
Amend rules on issuer-sponsored research	5
Other	

Please specify which other policy option would be most needed and have most impact to foster SME research:	
Question 68.1 Please explain your answer to question 68:	In our view, the most effective way of promoting SME research would be returning to bundling executions and research since it is a proven model, that worked perfectly in the past and would allow for an improvement in economics that would probably drive more brokers willing to put resources in this space.

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

V. Derivatives Trading Obligation

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

Statement	Rating
The EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO.	4
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	3
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	3
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	2
The DTO has provided added balue	2

Quantitative elements for question 77.1:
Estimate (in €)

Benefits	NA
Costs	NA

Qualitative elements for question 77.1:

If we believe that the EU intervention been successful in achieving or progressing towards more transparency and competition in trading of instruments subject to the DTO in normal circumstances, we do not consider equally straightforward to evaluate whether the DTO has provided some added value (item 4 above).

Indeed, in terms of transparency, DTO has provided some contribution towards the goal it was thought for, as it limited bilateral trading and moved a substantial part of the derivatives trading activity (demand and offer) on Trading Venues (and peculiarly on Regulated Markets), where prices by nature are “transparent”. However, its actual application should now be simplified by defining (and maintaining) a list of financial instruments subject to the DTO and to the Clearing Obligation (CO), as time is mature for doing so. Indeed, what is essential to banks and entities subject to the obligation, is the full/perfect alignment between the DTO and the CO based on the new EMIR Refit (and ESMA appears to be aware of this, based on recent publications), to make sure that no entity could end up being exempted from the DTO but subject to the CO, or viceversa. On this regard, we suggest an immediate reference from the DTO to the CO, so that, any forthcoming amendment to the scope of the CO would see a consequent amendment of the DTO.

However, our experience is that when the market is under exceptional circumstances, with high volatility and very low liquidity, transparency becomes a counterproductive aspect. Therefore, it should be assessed if the DTO should be waived under these circumstances

In terms of application, the DTO is revealing to have a too broad scope of application and we would recommend that TO should not apply to extra-EU branches. Indeed, in order to avoid that Head Offices’ activity is transferred to non-EU branches to circumvent the application of art. 23 (TO for shares) and 28 (TO for derivatives), both the following conditions should be met (i) extra-EU branches’ trades should be dealt

	against other non-EU players (including extra-UE branches of EU investment firms/banks), and (ii) deals should not be executed for any reason within the territory of the Union. Finally, we consider this topic (DTO) deserves to be moved from this section to the Priority Areas for Intervention (i.e. a move in the previous section of this consultation paper), because the market is in urgent need for the alignment of DTO and the CO in terms of scope of application for financial instruments and counterparties and such alignment should be quite straightforward to achieve on a legal/regulatory level, as it depends on amending the wording the legal text, while the industry is already operating and ready to adjust to it.
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?	3
If you do believe that some adjustments to the DTO regime should be introduced, please explain which adjustments would be needed and with which degree of urgency:	
Question 78.1 Please explain your answer to question 78:	Clarifications on the applicability to third country branches, assessment on the waiver of the requirement under exceptional market circumstances as well as alignment with EMIR Refit are expected.
Question 79. Do you agree that the current scope of the DTO is appropriate?	4

We believe the list of instruments subject to DTO is appropriate, but it urgently requires simplification of application for the entities subject to it, as better explained in answering Question 80.1.

Question 79.1 Please explain your answer to question 79:

We believe it would make sense to clarify that the DTO regime is a client protection measure (i.e.: trading in trading venues where pricing and reporting environment can be considered as optimal for the clients), which means that only the DTO regime applicable to the clients, depending of their place of trading/incorporation, would have to be fulfilled.

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?

4

Question 80.1 Please explain your answer to question 80:

Under MiFIR, the scope of counterparties subject to the DTO is defined with cross-references to the definition of financial and non-financial counterparties under EMIR. Since MiFIR was not amended by EMIR Refit, following the entry into force of EMIR Refit on 17 June 2019 there is a misalignment in the scope of counterparties: small financial counterparties (and potentially some non-financial counterparties) would be subject to the trading obligation while being exempted from the clearing obligation.

The changes in the scope of counterparties subject to the CO may be replicated in MiFIR for the DTO, to align again the obligations of both regulations and to simplify internal controls to comply with this requirement.

We also would like to underline ESMA's following statement (see Consultation paper on the transparency regime for non-equity instruments and the trading obligation for derivatives): "(..) ESMA notes that as per the draft RTS the provisions that apply to

the clearing obligation also apply to the trading obligation for derivatives, therefore if an exemption is given under EMIR, that same exemption also applies to the trading obligation.

X. Foreign exchange (FX)

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

5

Question 92.1 If you do not believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions, which recommendations would you make to improve the robustness of the regulatory framework?

We believe FX Spot should not be included, because of the following reasons:

- The nature of FX Spot is not considered to be a financial instrument.

- It is already under the scope of the FX Global Code of Conduct.

- Highly costs would be incurred versus risks that would mitigate.

Actually, we believe the current framework allows investment firms and banks to adequately operate in FX products, while allowing them to appropriately use spot contracts also for their clients (be it retail or professional) for payment needs. In this regard, **it is crucial that spot FX contracts remain outside the scope of application of any investor protection provision** and that the framework remains as the MIFID2 foresees. Also, we underline the crucial importance of having a perfect alignment among any Regulation that touches on FX products (be it MFIR, EMIR, MAR or any other).

Question 92.1 Please explain your answer to question 92:	
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:	The current regulatory framework for foreign exchange transactions is enough to grant proper business and trading activity. The fact that spot foreign exchange is not considered an investment product under MiFID II / MiFIR regime is not a restriction to act in the best interest of its clients since the entity is adhered to the FX Global Code an so committed with its principles of good practice for foreign exchange market participants and promotion of the integrity and effective functioning of the wholesale foreign exchange market.